BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
Carmen Anthony Puliafito, M.D.	)	Case No. 800-2017-034712
	)	
Physician's and Surgeon's Certificate No. G 88200	)	
	)	
Respondent.	)	
	)	

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by Peter R. Osinoff, Esq. on behalf of respondent, Carmen Anthony Puliafito, M.D., and the time for action having expired at 5:00 p.m. on August 17, 2018, the petition is deemed denied by operation of law.

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Carmen Anthony Puliafito, M.D.	)	**Case No. 800-2017-034712**
Physician's and Surgeon's Certificate No. G 88200	)	
Respondent	)	

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 17, 2018.

IT IS SO ORDERED July 20, 2018.

MEDICAL BOARD OF CALIFORNIA

By: _____
KRISTINA D. LAWSON, J.D., CHAIR
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CARMEN ANTHONY PULIAFITO, M.D., Physician and Surgeon's Certificate No. G 88200 Respondent.	Case No. 800-2017-034712 OAH No. 2017110642

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on May 30 and 31, and June 1, 4, 5, 6, 7 and 8, 2018, in Los Angeles, California.

Deputy Attorney General Rebecca L. Smith and Supervising Deputy Attorney General Judith Alvarado represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Peter Osinoff and Emma Moralyan, Attorneys at Law, represented respondent Carmen Anthony Puliafito, M.D., who was present throughout the administrative hearing.

The matter was submitted for decision on June 8, 2018.

FACTUAL FINDINGS

Introduction

1. On January 4, 2008, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 88200 to Carmen Anthony Puliafito, M.D. (respondent).

2. On September 22, 2017, pursuant to a stipulation between the parties, an Interim Order of Suspension was issued, suspending respondent's physician and surgeon's certificate pending a final decision by the Board.

3. Kimberly Kirchmeyer (complainant) is the Executive Director of the Board. On October 13, 2017, complainant brought the accusation solely in her official capacity.

4. The accusation alleges that there is cause for discipline of respondent's certificate based on the following contentions: 1) respondent suffers from a mental and/or physical illness that affects his competency; 2) respondent committed dishonest acts substantially related to the qualifications, functions or duties of a physician; 3) respondent violated drug statutes; 4) respondent misused controlled substances; 5) respondent used, prescribed or administered to himself a controlled substance or dangerous drug; 6) respondent prescribed, dispensed or furnished dangerous drugs without an appropriate examination and medical indication; 7) respondent knowingly made or signed a document directly related to the practice of medicine that falsely represents the facts; 8) respondent failed to maintain adequate and accurate medical records; and 9) respondent committed unprofessional conduct.

5. Complainant presented evidence in support of each of the nine causes for discipline. The evidence established that respondent committed serious misconduct occurred during an extended and severe hypomanic episode resulting from Bipolar II Disorder, and a related Substance Use Disorder. Although respondent challenged some of complainant's factual allegations, his defense focused on his treatment and rehabilitation rather than challenging whether there is cause for discipline.

6. In November 2007, respondent assumed the deanship at the Keck School of Medicine at the University of Southern California (USC). In his position as Dean, respondent served as the Chief Academic Officer of the Keck School of Medicine; respondent oversaw the faculty, department chairs, research, scientists, and medical school and residency programs. As a result of respondent's misconduct, described below, he resigned his position as Dean in March 2016; his practice privileges were terminated automatically after his license was suspended by the Board in September 2017.

Respondent's Relationship with SW[1] and his Use of Controlled Substances

7. Respondent occasionally used an online escort service to spend time with women. In late February 2015, respondent met SW through an escort service.[2] SW was 20 years old, working as a prostitute and using methamphetamine regularly. They met at a hotel and engaged in sexual conduct. SW reports that she was paid $400. During this first

[1] Initials are used to replace the name of the individual identified herein as SW, as well as the names of her family members and friends, in order to protect their privacy.

[2] SW and her brother CW refused to testify at hearing, asserting their Fifth Amendment privilege against self-incrimination. The parties thereafter stipulated to the declarations of SW and CW being admitted into evidence for all purposes. The audiotapes and transcripts of their Board interviews were received in evidence as administrative hearsay.

meeting, SW invited respondent to smoke methamphetamine,[3] which she had brought with her; respondent agreed and they each smoked methamphetamine.

8. SW asked for respondent's cell phone number because she felt he really liked her. They began a relationship that continued until November 29, 2016, when SW entered a rehabilitation program. In December 2016, respondent became aware that SW was performing community service; he went to the location and waved at her. SW did not want to see respondent and asked the supervisor not to allow him to approach her.

9. In March 2015, SW contacted respondent from Portland, Oregon, and asked him to fly her to Southern California and wire her money, stating that she was in fear of a man she was with. Respondent agreed. He bought her a plane ticket, wired some cash and rented her a room at the Hilton Hotel in Glendale where SW stayed for several days, until moving to the Hilton Hotel in Pasadena, where she stayed until mid-April 2015, when she moved to the Hilton in Beverly Hills until April 25, 2015. Respondent paid for SW's hotel stays.

10. Respondent had become bored with his position as Dean of the Keck School of Medicine. He had interviewed with a few universities for the position of president, but had not been extended an offer. As will be discussed below, at that same time, respondent entered a severe and extended hypomanic episode associated with his as yet undiagnosed Bipolar II Disorder. Respondent became infatuated with SW and began to spend time with her almost daily; he purchased expensive gifts for her and focused most of his attention on her. Respondent considered SW to be an individual with potential and he considered himself the person who would rescue her from her destructive lifestyle. SW was a troubled, drug-addicted young woman who accepted respondent's attention and gifts.

11. In the spring of 2015, as respondent was spending more and more time with SW, his wife of many years became very concerned about his behavior. Department Chairs at the Keck School of Medicine also expressed concern because respondent appeared to be disengaged from his duties and was skipping meetings with them.

12. According to SW, from the spring of 2015 until November 29, 2016, she and respondent saw each other and used illicit drugs almost every day, estimating that she observed respondent use illicit drugs on 600 to 700 occasions. Respondent concedes that he saw her several times each week and that they were in daily contact over the course of their relationship. Respondent disputes that he used illicit drugs with her daily; however, he concedes he used methamphetamine 50 to 100 times, heroin[4] five to 10 times, and ecstasy[5]

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[3] Methamphetamine is an illegal synthetic drug of abuse, and a Schedule II controlled substance as defined by Health and Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to Business and Professions Code section 4022.

[4] Heroin is a highly abusable illegal drug and a Schedule I controlled substance as defined by Health and Safety Code section 11054, subdivision (c)(11), and a dangerous drug

and marijuana[6] a few times. Respondent and SW often spent time shopping together; respondent estimates that he spent over $300,000 on clothing, make up, furniture, apartments, hotel rooms, car payments, dental work, rehabilitation programs, attorney's fees, bail and other expenses for SW. Respondent spent a lot of time using illicit drugs with SW, her drug-abusing friends and her 17-year-old brother, CW, over the course of this relationship.

13. SW reports that respondent regularly provided her with methamphetamine, heroin, ecstasy and benzodiazepines. The evidence established that SW was using methamphetamine before she met respondent, and was introduced to heroin by another individual. The evidence also established that SW spent time with other drug users and individuals who sold drugs. Whether respondent purchased and transported illicit drugs for SW was not established by clear and convincing evidence.

14. Early on in his relationship with SW, respondent rented an apartment for SW on Del Mar Street in Pasadena and spent thousands of dollars on home furnishings for the apartment. On May 10, 2015, respondent rented a different apartment for SW on Oak Knoll Street in Pasadena. Respondent again spent thousands of dollars furnishing the apartment. On August 1, 2015, respondent leased a car for respondent. On August 24, 2015, SW was arrested for shoplifting. Respondent hired an attorney to represent her.

15. Over the course of their relationship, respondent took SW with him on social and business trips, including trips to Boston, Las Vegas, New York, Florida and Switzerland.

16. After becoming aware that respondent was using illegal substances and spending time with a 20-year-old woman, respondent's wife, a psychiatrist herself, asked him to see a psychiatrist. Respondent began treating with psychiatrist Daniel B. Auerbach, M.D., on July 23, 2015. Respondent saw Dr. Auerbach two to four times per month for therapy. Respondent had admitted to Dr. Auerbach that he was involved with a 20-year-old woman who was a poly-drug user, whose usual drug of choice was methamphetamine.

By October 2015, Dr. Auerbach concluded that respondent was hypomanic and diagnosed him with Bipolar II Disorder. Dr. Auerbach prescribed Lithium, which respondent discontinued due to side effects. In December 2015, Dr. Auerbach prescribed the mood stabilizer Lamictal.

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pursuant to Business and Professions Code section 4022.

[5] Ecstasy (MDMA) is an illegal synthetic hallucinogen and a Schedule I controlled substance as defined by Health and Safety Code section 11054, subdivision (d)(4), and a dangerous drug pursuant to Business and Professions Code section 4022.

[6] Marijuana is a federally illegal Schedule I controlled substance as defined by Health and Safety Code section 11054, subdivision (d)(13), which has a high potential for abuse.

According to Dr. Auerbach, within a few weeks of treatment, respondent had a definite response and began to recognize how pathologic his thinking had been. The evidence establishes, however, that respondent did not change his behavior while in treatment.

17. In mid-November 2015, SW, respondent and two of SW's friends traveled to Las Vegas. Respondent was scheduled to attend meetings and to speak at the American Academy of Ophthalmology Annual Meeting. Respondent failed to attend the meetings or give his presentation. Respondent relocated to another hotel with SW and two of her friends where they smoked methamphetamine.

18. Henri Ford, M.D., was the Vice Dean of Medical Education, and the Vice Chair and Professor of Surgery at the Keck School of Medicine, for eight years, ending June 1, 2018. In the fall of 2015, Dr. Ford noticed a change in respondent's behavior. He became detached from the day-to-day running of the School of Medicine, and seemed to care less about elevating the institution. Dr. Ford suspected that respondent had been told he would not be reappointed to a third term, and was dismayed that he had not been selected to become the president of several universities.

19. Dr. Ford did not come to fully understand respondent's disengagement until December 2015, when the USC Events Coordinator contacted him regarding respondent's conduct at the conference in Las Vegas. Dr. Ford learned that respondent had checked out of the conference hotel, moved to another hotel where a lot of "partying" was going on and had missed the meetings and his speaking engagement. The Events Coordinator was concerned about the company respondent was keeping, and reported having seen those individuals with respondent prior to the conference.

Dr. Ford considered the report to be highly unusual. He tried to confront respondent, but respondent became stand-offish and refused to discuss it. Given the seriousness of the allegations, Dr. Ford contacted the USC Provost to report the matter, but the meeting was not scheduled before the holidays. In January 2016, Dr. Ford noticed a marked improvement in respondent's behavior, so he let it go. Respondent had begun to attend Department Chair meetings again and demonstrated that he was re-engaged.

20. The following month, however, respondent again started skipping meetings with Department Chairs and no one could locate him. Respondent's assistant expressed concern about him; she reported that respondent was putting hotel charges on his USC credit card when he was not on official business and she showed Dr. Ford evidence of her claims. Dr. Ford observed respondent to be detached and withdrawn from the Keck School of Medicine. Dr. Ford tried to confront respondent, but respondent again refused to discuss it. Based on what he was told, Dr. Ford became concerned that respondent's life was in danger. He believed that respondent was using drugs and was in the company of people of questionable repute, and he was worried that they would find respondent dead in a hotel

room. Concerned about respondent's well-being and USC's reputation, Dr. Ford contacted the Provost on March 2, 2016, to report the matter.

SW's Overdose at the Hotel Constance

21. In February 2016, SW was admitted to Michael's House, a substance abuse rehabilitation program in Palm Springs, where she was treated for drug abuse. Respondent supported her attendance and paid for the program. SW did not follow up with the aftercare recommendations and began using drugs again shortly after her discharge.

22. On March 3, 2016, respondent rented a room for SW at the Hotel Constance in Pasadena. According to SW, on the afternoon of March 4, she and respondent smoked methamphetamine and heroin in the hotel room, and that she also ingested GHB.[7] SW states that she took "way too much" GHB and passed out. SW reports that this had occurred before, and respondent would just let her sleep it off.

23. Devon Khan was the Reservations Supervisor at the Hotel Constance in March 2016; Khan testified at hearing with candor and credibility. At approximately 4:00 p.m. on March 4, 2016, the front desk supervisor asked Khan for assistance with a guest who was due to check out but was insisting on staying longer. The guest was respondent. The front desk supervisor reported that when he spoke with respondent on the phone, respondent appeared to be very "jittery," stating his partner was unresponsive due to excessive alcohol consumption. The room (Room 304) had been committed to another guest. The supervisor offered to send a wheelchair to the room to assist with the room change. While Khan was at the front desk discussing the issue, he was called by the Third Floor Supervisor to assist with an issue in Room 304.

24. Khan reported to the third floor and was told that the Housekeeping Supervisor reported that there was an unconscious woman in Room 304 who needed medical attention. Khan knocked on the door to respondent's room and respondent exited the room and asked if Khan had brought the keys for the new room (Room 312). Khan was confused because he understood that respondent was refusing to change rooms. Khan decided to cooperate with the request for keys as an opportunity to get inside of the room to confirm the reported observation of an unconscious guest. Khan returned to the hotel desk and obtained keys to Room 312. When Khan returned to respondent's room, respondent allowed him inside of the room. Khan assessed the status of the room; he observed a bag with a dozen small metal tanks and a balloon, a box for a butane torch, burn marks on the bedding, a tripod mounted on the television, and empty bottles of alcoholic beverages scattered about. SW, dressed in a bra, underwear and a robe, was slumped over unconscious.

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[7] GHB, or Gamma-Hydroxybutyrate, is sometimes referred to as a "club drug" or a "date rape drug;" it is a Schedule I controlled substance pursuant to Health and Safety Code section 11054, subdivision (e)(3), and a dangerous drug pursuant to Business and Professions Code section 4022; GHB is difficult to detect in drug screens.

25. A bellman was present with a cart to move the guests' belongings to Room 312. Khan could see that SW was breathing and he tried to rouse her, but she was completely unresponsive, "like a rag doll." They began pushing her in a wheelchair to the other room, with the housekeeper holding her legs in place. When they arrived at Room 312, Khan stated that he was going to call 911. Respondent replied that he was a physician and there was no need to call 911 because he would keep an eye on SW. Khan felt an obligation to his hotel guest (SW) and to the hotel to seek immediate medical attention. Khan advised respondent that he would be calling 911 and left the room.

26. Khan ran back to the front desk and called 911, advised the dispatcher of the situation, then transferred the call to Room 312 for respondent to answer some questions. Khan then advised security to secure Room 304 because it appeared to be a crime scene. Khan waited for paramedics and advised them what he had observed and that it appeared drugs were involved based on his observations and a report he had received from the day prior.

27. Khan described respondent's appearance on March 4, 2016, as looking like he had "had a rough night." He did not perform an assessment to determine whether respondent was under the influence.

28. Pasadena Paramedic/Firefighter Paul Hampton testified with candor and credibility at hearing. Hampton has been a Pasadena firefighter for over 10 years, and has been a firefighter/paramedic for over eight years. Hampton responded to the Hotel Constance on March 4, 2016, at 4:56 p.m. When he entered Room 312, Hampton found SW unconscious in a wheelchair. Hampton observed that SW had pinpoint pupils and agonal (inadequate) respirations.

29. Hampton noted that SW had an altered level of consciousness. SW was non-verbal, her eyes were closed and she had no response to motor or verbal commands. Hampton gave SW a Glasgow Coma Scale (which measures an individual's neurological status) score of three, the lowest level, normal being 15 or higher. SW's oxygen saturation rate and pulse were normal. Hampton suspected that SW had suffered a narcotics overdose. At 5:00 p.m., Hampton administered Naloxone[8] to reverse the overdose. (Naloxone does not treat an alcohol overdose.) Hampton observed some improvement in SW's symptoms after the Naloxone was administered. As the Naloxone took effect, SW became combative and began to flail; she was put into restraints and transported to the nearest hospital, Huntington Hospital.

30. Pasadena Paramedic Todd Witt testified with credibility and candor at hearing. Witt arrived at the Hotel Constance with Hampton. Hampton was assigned to patient care and Witt was the driver and factfinder. As the factfinder, Witt spoke to witnesses and inspected the scene. Witt spoke to hotel personnel and respondent. He learned that SW was found in Room 304 and he requested permission to see that room. Witt observed Room 304

[8] Naloxone, sold under the brand name Narcan, is used to reverse opiate overdoses.

to be messy; he also observed alcohol bottles and what he considered to be drug paraphernalia in the room. He saw enough to confirm his suspicion that SW had ingested drugs.

31. When interviewed by Witt, respondent identified himself as a friend of SW's family. Respondent stated that SW had been drinking and had alcohol abuse issues. Witt does not recall respondent saying that SW had a history of drug abuse. Witt felt that Room 304 should be inspected by a police officer. At the hospital, Witt reported to Pasadena Police Officer Alfonso Garcia that he observed indications that illicit drugs had been used in Room 304. He also advised Officer Garcia that respondent was a family friend who had no knowledge of SW abusing drugs, but that there was an alcohol issue. Although the report signed by Witt and Hampton states: "Family friend stated that the pt has a [history] of drug/alcohol abuse" Witt does not recall respondent saying this; he does not know where that information came from.

32. Officer Garcia was assigned to investigate the overdose. The Pasadena Police Department treats overdose investigations differently from criminal investigations; when responding to an overdose, the officer investigates the patient as a victim rather than a criminal in order to encourage overdoses to be reported for assistance.

Officer Garcia arrived at Huntington Hospital at approximately 5:00 p.m. on March 4, 2016. He observed SW yelling incoherently while she was being treated, unresponsive to verbal prompts. The incident had been reported as an individual passed out due to alcohol consumption. When Officer Garcia spoke to the paramedics, he was advised that it appeared a combination of drugs had been consumed. Paramedic Witt reported to him that a family friend had advised that SW was unconscious due to alcohol consumption. However, the paramedics concluded drugs were involved and reported observing drug paraphernalia on site.

33. Officer Garcia interviewed respondent at the hospital; the interview was recorded. Respondent identified himself as a physician, an ophthalmologist. Respondent advised Officer Garcia that SW had been discharged from a rehabilitation center three weeks earlier where she had been treated for alcohol abuse. Respondent told Officer Garcia that he had no knowledge of SW abusing drugs. Respondent further stated that he had arrived at the hotel at 4:00 p.m. and he observed SW passed out and thought she was sleeping because she was responsive but groggy. Respondent told Officer Garcia that he had called the hotel staff and they called 911. Respondent's statements to Officer Garcia were not truthful.

34. Officer Garcia then reported to the hotel to inspect Room 304. He found a small bag of methamphetamine, empty "Whip It" cartridges,[9] and traces of

[9] Whip It cylinders contain nitrous oxide that can be consumed with a balloon for a quick high; they are not illegal to purchase. Nitrous oxide is an inhalant used in anesthesia and drug abuse. It is used to achieve euphoria and is highly abusable. It is illegal to ingest other than for anesthesia.

methamphetamine scattered on the balcony. Officer Garcia discarded the Whip It cartridges because he was not investigating a criminal case; he booked the methamphetamine.

35. When alert, SW admitted to a physician that she had ingested methamphetamine, benzodiazepines and heroin. SW reported to Social Worker Lauren Carroll, L.S.W., that she had ingested heroin and GHB. The toxicology report indicated that SW had ingested opiates, methamphetamine, benzodiazepines, ecstasy, and a minimal amount of alcohol.

36. Respondent was interviewed by Social Worker Carroll at the hospital. Respondent reported to Carroll that he was a friend of SW's father but did not have her father's telephone number. He again reported untruthfully that SW had a history of excessive alcohol use and had recently been treated for alcohol abuse. Respondent did not ask for Carroll's assistance in obtaining substance abuse treatment for SW.

37. When SW was discharged later that evening, respondent returned her to the Hotel Constance. SW states that respondent told her he had placed a bag of drugs and drug paraphernalia, including heroin, methamphetamine and GHB, in the hotel stairwell a couple of floors away from the room, and that he retrieved the bag when they returned, and they continued to use drugs in Room 312.

Later the same evening, a food service worker who brought food to Room 312, was given a large bag filled with cracked and broken, used pipes. The bag was given to security. The evidence did not establish who was in the room at the time. The hotel records indicate that respondent was charged $137.87 for a dinner delivery to Room 312 on the evening of March 4, 2016.

Respondent denies having hidden drugs in the stairwell or used drugs with SW after returning from the hospital. He claims he dropped SW off at the hotel and returned home. In light of respondent's untruthful statements to emergency and police personnel, his testimony at hearing which minimized his involvement in the incident, SW's statements and the report of the food service worker, respondent's testimony that he did not remain at the hotel, did not retrieve drugs from the stairwell and did not use drugs with SW was not credible.

38. Following SW's overdose, respondent continued to see SW nearly daily and continued to use illicit drugs with her.

Respondent Resigns as Dean

39. Based on Dr. Ford's March 2, 2016 contact, the Provost called respondent in for a meeting during the second week March. Following the meeting, respondent told Dr. Ford that the Provost stated that the university had lost faith in his leadership; at that point, respondent submitted his resignation as Dean and they negotiated a settlement. Respondent remained a member of the practicing faculty at the Keck School of Medicine, and continued

in his practice at his clinic in Beverly Hills. Respondent was seeing up to 16 patients on the first and third Monday of each month.

Respondent's Traffic Accident

40. On March 8, 2016, at 3:35 a.m., respondent was involved in a solo vehicle collision in San Marino, California. Respondent reported to responding officers that he was traveling on Los Robles at approximately 35 miles per hour and the next thing he remembered was the vehicle air bag in his face. Respondent stated that he thought he had fallen asleep at the wheel. Respondent had a scrape on his forehead and complained of pain to his neck and head, but refused medical treatment. The physical evidence led the officer to conclude that respondent fell asleep, made an unsafe turning movement and veered to the left, colliding with the curb and continuing into the bushes.

Incident at Waterfront Hilton in Huntington Beach

41. SW attended another drug treatment program in May or June 2016, which respondent paid for. SW she left the program before completing it.

42. On June 22, 2016, at 6:03 a.m., police were called to the Waterfront Hilton Hotel in Huntington Beach regarding a subject brandishing a gun. Officers located respondent outside of the front entrance to the hotel. Respondent reported that he had rented a room at the hotel for a friend (SW) the afternoon of June 21, 2016. Respondent told officers that he left after renting the room for SW and returned at 6:00 a.m. to check SW out of the hotel room. When respondent tried to enter the room with his key, the key did not work. He then knocked on the door and a male voice answered. Respondent demanded to be allowed in or he would contact security. Respondent stated that the door suddenly opened and a male stood in the doorway. Respondent saw SW leaning over the bed in the room. Respondent called out to SW, at which point the male kicked him in the groin and pointed a gun at his forehead and told him to go away. Respondent ran away and called police.

The male who answered the door was a new friend of SW's and had a permit to carry a concealed weapon. He was arrested for brandishing a weapon. While the officers were on site, respondent complained of pain to his groin area; however, when paramedics arrived, respondent refused medical attention.

43. Following this incident, respondent continued to see SW regularly and took her to Switzerland in July 2016. In August 2016, respondent rented a new apartment for SW.

Respondent's Prescriptions for SW

44. Respondent was not SW's physician; yet he referred her to providers at USC and prescribed numerous medications for SW, including acne medications, inhalers, antibiotics, anti-inflammatories, contraceptives and Chantix, a medication used to treat a

tobacco addiction. Respondent also provided SW with a prescription for Clonazepam,[10] a controlled substance. Respondent never documented a physical examination of SW. The following table documents the prescriptions written by respondent on the dates filled by SW.

Date Filled	Medication
2015	
April 8	Mupirocin Ointment
May 6	Acanya Gel Pump
May 29	Necon
June 1	Mupirocin Ointment
	Fluocinonide Cream
June 4	Moxifloxacin
June 21	Necon
June 25	Lidocaine
	Acanya Gel Pump
July 11	Cyclafem
	Ondansetron
July 14	Vigamox Eye Drops
	Lotemax Eye Drops
August 3	Hydroquinone
	Ondansetron
August 9	Necon
August 17	Fluconazole
August 18	Acanya Gel Pump
September 3	Mupirocin Ointment
September 16	Acanya Gel Pump
	Necon
October 7	Necon
October 8	Oandansetron
October 10	Proair Inhaler
	QVAR Inhaler
October 28	Azithromycin
November 14	Acanya Gel Pump
	Advair Inhaler
	Amoxicillin

[10] Clonazepam, sometimes referred to as Klonopin, is a benzodiazepine and a Schedule IV controlled substance as defined in Health and Safety Code section 11057, subdivision (d)(7), and a dangerous drug pursuant to Business and Professions Code section 4022.

November 16	Prednisone
	Triamcinolone Cream
November 23	Amoxicillin
	Mupirocin Ointment
	Valacyclovir
December 26	Klonopin

2016

January 9	Bacitracin
	Ofloxacin
	Prednisolone
January 15	Klonopin
February 19	Klonopin
February 25	Acanya Gel Pump
	Mupirocin Ointment
March 4	Fluconazole
	Necon
	Nitrofurantoin
March 14	Mupirocin Ointment
March 15	Nitrofurantoin
April 5	Azithromycin
	Fluconazole
	Metronidazole Cream
April 27	Ondansetron
April 30	Celecox
	Clotrimazole Cream
May 7	Azithromycin
	Fluconazole
	Sulfamethoxazole
	Terconazole
May 20	Clotrimazole
May 26	Acanya Gel Pump
June 4	Cyclafem
June 19	Celecox
July 6	Moxifloxacin
	Sulfamethoxazole
August 7	Chantix
September 4	Mupirocin Ointment
September 26	Mupirocin Ointment
October 26	Acanya Gel Pump
	Cyclafem
	Mupirocin Ointment

The End of Respondent's Relationship with SW and Continued Drug Use

45. On November 29, 2016, SW entered a rehabilitation program and cut off communication with respondent. Respondent continued to spend time with SW's friends and to use heroin and methamphetamine until June or July 2017 when he entered a rehabilitation program. Respondent's continued drug use and association with drug users after his relationship with SW ended is at odds with his claim that his misconduct was rooted in his obsession with SW.

Respondent's Relationship with DY

46. Respondent had developed a relationship with a friend of SW's, DY. In December 2015, respondent took DY to a Christmas party where USC colleagues were present. Respondent initially testified that he was unaware that DY was a known drug user or that he had ever seen her use drugs. This testimony lacked credibility; DY was a member of SW's circle of drug-abusing friends. Respondent later admitted that DY called him in early 2017 and stated that she had a problem: she was pregnant and was smoking heroin. Despite reports that respondent had referred to DY as his girlfriend on occasion, respondent denies being the father of DY's baby, and claims that they never had sexual relations. Respondent reported having spoken to DY once per month in 2017, stating that he was checking on her because she was pregnant and had few resources. Respondent concedes that he started paying for DY's housing in February 2017. Respondent described the extent of his relationship with DY as her "healthcare consultant," noting that he paid for her midwife services.

Respondent admitted on cross-examination, however, that he flew DY to St. Louis, Missouri, to meet her parents and stayed at their home for two days. Respondent also admitted that he took DY on vacation to Hawaii in March 2017 and to Israel in May 2017.

Respondent's Relationship with KV

47. Respondent also became friends with KV, another friend of SW's. KV was never respondent's patient; however, respondent admits that in July 2016, respondent wrote a letter to Veteran Affairs on Keck School of Medicine letterhead describing KV as being under his care for a severe inflammation of the left eye. Respondent recalls the letter; he states that he had examined KV, but admits that KV was not his patient. Respondent reports that KV is now in prison; the evidence did not establish when respondent last had contact with KV.

Respondent's Relationship with CW

48. CW is SW's younger brother. Respondent was never CW's physician and never performed or documented a medical examination of him. However, respondent

prescribed an asthma inhaler for CW. The prescription was filled on December 30, 2015, and March 20, 2016. CW was 17 years old at the time the prescriptions were filled.

49. CW reports that respondent purchased alcohol for him between 45 and 50 times. CW would accompany respondent to a liquor store where respondent would spend up to $1,000 on expensive whiskey and craft beer. On CW's 18th birthday, respondent paid for alcoholic beverages and other incidentals at a party at a Hilton hotel for CW and four or five of his underage friends. CW also described respondent taking him to smoke shops, where he would wait outside while respondent purchased drug paraphernalia for him, including bongs and methamphetamine pipes. CW observed respondent smoke methamphetamine and reports that respondent provided him with marijuana and nitrous oxide whenever they were together. CW reports further that respondent prescribed an inhaler from him to soothe his lungs after smoking marijuana and methamphetamine. CW's statements were detailed and supported by other evidence, including respondent's prescription of an inhaler for CW. CW's statements are found to be credible.

Respondent's Relationship with DS

50. In August 2016, SW began dating DS. Respondent met DS through SW. Respondent, SW and DS spent time drinking alcohol and smoking marijuana and methamphetamine together for approximately six to eight weeks, until DS went into a drug rehabilitation program in the fall of 2016. Respondent helped DS financially with a place to stay and a storage unit, and expected nothing in return.

51. DS was interviewed by Board Investigator Faren Moreno Garay on July 24 and August 1, 2017. DS signed a declaration under penalty of perjury regarding his relationship with respondent and SW.

DS testified at hearing. Although his testimony was not entirely consistent, and he appeared somewhat biased toward respondent in expressing his appreciation for the generosity respondent showed him during their relationship, overall his testimony was credible.

52. DS confirmed that the majority of time respondent, SW and DS spent time together, they smoked methamphetamine. DS observed respondent use methamphetamine and heroin. He estimated that during the six-to-eight week time period, he observed respondent use methamphetamine five to six days out of the week. DS never saw respondent use drugs to the point that he lost control or his focus; he considered respondent to be a "functional methamphetamine smoker." DS observed respondent smoke marijuana, but that was less often. DS does not know if respondent went to work after he used drugs.

53. DS retracted one statement at hearing. During his interview, and in his declaration, DS stated that respondent provided the marijuana and methamphetamine and that there was over $1,000 worth of drugs available daily. DS provided a supplemental declaration stating that he did not know who had provided the drugs. At hearing, DS

reiterated that he had no personal knowledge of who obtained the drugs that were available to respondent, SW and to him.

Article in the Los Angeles Times

54. On July 17, 2017, the Los Angeles Times published an article describing respondent's involvement with illicit drugs and prostitution, and SW's overdose.

The Keck School of Medicine Investigation

55. An Ad Hoc Committee was tasked by USC and the Keck Hospital Medical Staff Executive Committee with investigating respondent after the article in the Los Angeles Times on July 17, 2017, and subsequent articles, raised concerns about respondent's behavior. While the investigation was pending, respondent's certificate was suspended by the Board. As a result, respondent's practice privileges were automatically terminated. USC then submitted a Business and Professions Code section 805 report[11] to the Board.

56. The Ad Hoc Committee was comprised of six physicians from the Keck Medical Center of USC. The Ad Hoc Committee interviewed witnesses and reviewed between 20 and 24 patient charts from the Keck Medical Center of USC; it did not review patient charts from respondent's clinic or from other hospitals. On October 17, 2017, the Ad Hoc Committee completed its investigation and issued a report of its findings and recommendations.

The Ad Hoc Committee found evidence of a significant behavior change in the spring of 2015, which was consistent with the reporting in the Los Angeles Times article.

The Ad Hoc Committee also found evidence that in his role as Dean, the University administration had significant and longstanding issues of concern regarding respondent's unprofessional and belligerent conduct; respondent's behavior was unacceptable to many faculty, staff and colleagues. To address these issues, respondent had been ordered to complete a professional anger management course in 2011. The Ad Hoc Committee also found evidence that in his role as Dean, concerns had been expressed that respondent used alcohol excessively. Respondent's continued pattern of unacceptable behavior contributed to the loss of his deanship in 2016.

The Ad Hoc Committee did not find direct evidence of compromised patient care by respondent.

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[11] Pursuant to Business and Professions Code section 805, a designee of a committee organized by any entity consisting of more than 25 physicians that functions for the purpose of reviewing the quality of medical care provided by members of the entity, must file a report with the Board within 15 days after which a physician's employment is terminated, staff privileges are revoked or denied, or restrictions are imposed on staff privileges, membership or employment for a total of 30 days or more, as a result of a medical disciplinary reason.

Expert Opinions of Dr. Fong

57. Timothy W. Fong, M.D., was called by complainant to provide expert testimony. Dr. Fong graduated from Northwestern University Medical School in 1998. He completed a four-year residency in adult psychiatry at the University of California Los Angeles (UCLA) Neuropsychiatric Institute and Hospital in 2002. Dr. Fong attended an addiction psychiatry fellowship at the same institution from 2002 to 2004. Dr. Fong is board certified in psychiatry and addiction psychiatry.

Dr. Fong has been a Clinical Professor (compensated) in the Department of Psychiatry and Biobehavior Sciences at the David Geffen School of Medicine at UCLA since 2004. In the course of his work, Dr. Fong provides inpatient, outpatient and emergency care for psychiatric patients. Dr. Fong was a staff physician at the Asian Pacific Counseling and Treatment Center in Los Angeles beginning in 1999; he was promoted to the position of Director of the Dual Diagnosis Program in 2002. From 1992 until 1998, Dr. Fong was a research assistant at Northwestern University Medical School.

58. In August 2017, Dr. Fong was contacted by a Board investigator requesting an expert review. He reviewed the interview transcripts of SW, CW and DS, SW's medical records, police and hospital reports, a CURES report,[12] pharmacy reports, a draft investigation report, audio records and photographs. Dr. Fong did not interview respondent, but felt, after reviewing the documentation provided to him, that he had enough information to form his opinions without an interview. Dr. Fong wrote reports of his findings dated September 6, 2017, and April 28, 2018, and signed a declaration in support of the Petition for an Interim Suspension Order on September 12, 2017.

59. Dr. Fong considered and relied upon the interview statements and declarations of SW and CW, in addition to the balance of the evidence he was provided, in reaching his opinions. As stated elsewhere herein, certain of SW's factual statements do not support findings made under the clear and convincing evidence standard; however, nothing in her statements or declaration is found to be untruthful. Most keys points made by SW have been corroborated by other evidence. Therefore, Dr. Fong's reliance on SW's statements does not detract from the weight accorded to his testimony.

60. Dr. Fong concluded that respondent used amphetamine, heroin and other illicit drugs on an ongoing basis in 2015 and 2016. Dr. Fong considered it significant that although respondent was aware that SW was attending rehabilitation programs, he was supporting her continued drug use.

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[12] Pursuant to Health and Safety Code section 11165, the Department of Justice maintains the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and internet access to information regarding the prescribing and dispensing of Schedule II, Schedule III and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense controlled substances.

61. Based on the information he reviewed, Dr. Fong diagnosed respondent with: 1) Amphetamine Use Disorder; 2) Opioid Use Disorder; and 3) Tobacco Use Disorder. Dr. Fong opined that respondent met the diagnostic criteria in the DSM-5[13] for Substance Use Disorder (to multiple substances but primarily methamphetamine and opioids).

62. In his September 6, 2017 report, Dr. Fong found that respondent was not able to practice medicine safely. He recommended that respondent undergo rigorous substance abuse and mental health treatment with physicians experienced in treating impaired physicians, followed by a fitness for duty examination, and the completion of remedial and basic coursework.

63. Based on his subsequent review of the reports by Dr. Auerbach, Dr. Fong accepts that respondent suffered from untreated and unstable Bipolar II Disorder from February 2015 to July 2017. Dr. Fong agrees that a severe hypomanic episode is consistent with respondent's behavior, including drug use and poor judgment and decision-making.

64. Dr. Fong considered the traffic collision report dated March 8, 2016, when respondent was involved in a solo accident at 3:35 a.m. Based on the totality of the evidence, Dr. Fong opined that the accident resulted from respondent's Bipolar II and Substance Use Disorders.

65. Dr. Fong considered the conflict on June 20, 2016, during which a friend of SW's pointed a gun at respondent to be the result of respondent's poorly treated Bipolar II Disorder and Substance Use Disorder.

66. In his April 28, 2018 report, Dr. Fong acknowledged that respondent had undergone substance abuse treatment in July 2017 and continued treatment for his Bipolar II Disorder. He opined that public safety required ongoing monitoring and a longer period of stability, at least 12 months in treatment in light of the harmful and dangerous behaviors displayed during his hypomanic episode. Dr. Fong continued to recommend an independent medical evaluation and remedial coursework. He also recommended that a feasible and approved return to work plan be put in place before respondent is considered safe to practice medicine.

OPINION REGARDING RESPONDENT'S CURRENT LEVEL OF IMPAIRMENT

67. Dr. Fong considers Substance Use Disorder to be a chronic, lifelong disorder with a potential for relapse that requires ongoing monitoring and support. In Dr. Fong's opinion, respondent's Substance Use Disorder and Bipolar II Disorder impair his ability to practice medicine safely.

Dr. Fong noted that respondent's behavior in 2015 and 2016 was very dangerous and potentially harmful to his patients and to the public. Despite the resources at respondent's disposal, and his intelligence, respondent was unable to contain his Bipolar II and Substance

[13] Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013).

Abuse Disorders over an extended period of time. Because respondent's behavior from February 2015 to July 2017 was so severe, Dr. Fong does not consider respondent to be safe to return to practice at this time. Dr. Fong opined that evidence of a minimum of 12 months of sustained, documented remission, followed by an independent medical examination finding him fit for duty, and a return to work plan including a supervised environment with monitoring by individuals familiar with respondent's medical condition and past misconduct, must be provided before respondent should be considered safe to return to practice, even while on probation and under strict monitoring.

OPINIONS REGARDING RESPONDENT'S VIOLATIONS OF THE STANDARD OF CARE

68. Dr. Fong persuasively opined that the following conduct by respondent constituted extreme departures from the standard of care:

a. Respondent prescribed 56 medications to SW, who was not his patient, without a physical examination and documentation in the medical record;

b. Respondent prescribed medications to CW, a minor who was not his patient, without a physical examination and documentation in the medical record;

c. Respondent provided alcohol, drug paraphernalia and illicit drugs to CW, a minor;

d. Respondent was aware that SW was a known Substance Use Disorder patient when he provided her with a prescription for Clonazepam, a controlled substance with the potential for abuse and overdose especially when taken with alcohol or opiates;

e. Respondent handled and used illicit drugs in a hotel room;

f. Respondent allowed SW to return to a hotel after suffering a potentially fatal overdose instead of obtaining treatment for her; and,

g. Respondent was not honest with SW's healthcare providers at the time of the overdose, which could have jeopardized her life.

Respondent's Background and Testimony at Hearing

69. Respondent earned a bachelor's degree from Harvard College in 1973. He attended Harvard Medical School, graduating magna cum laude in 1978. He was a fellow in ophthalmic pathology at the Howe Laboratory of Ophthalmology at Harvard in 1976 and 1977. Respondent completed an internship at the Faulkner Hospital at the Tufts University School of Medicine in 1979, and a residency in ophthalmology at the Massachusetts Eye and Ear Infirmary at Harvard Medical School in 1982. Respondent was a fellow in vitreoretinal

diseases and surgery at the Massachusetts Eye and Ear Infirmary from 1982 to 1984, and a clinical fellow in ophthalmology at Harvard from 1979 to 1984.

70. Respondent began his career at Harvard's Massachusetts Eye and Ear Infirmary, where he was the founder of the Laser Research Laboratory, Director of the Morse Laser Center, a member of the Retina Service and an associate professor of ophthalmology.

71. Respondent was the founding director of the New England Eye Center and Chair of the Department of Ophthalmology at Tufts University from 1991 to 2001.

72. From July 2001 until October 2007, respondent served as the Director of the Bascom Palmer Eye Institute and Chair of the Department of Ophthalmology of the University of Miami Miller School of Medicine. Respondent's leadership raised the standing of the Bascom Palmer Eye Institute; it eventually became the premier institute of its kind.

73. Respondent is extremely well-regarded for his contributions to the field of ophthalmology. He assumed the deanship at USC in 2007.

74. Respondent regrets his misconduct. At hearing, he apologized to SW, his wife and family members, the medical profession, medical students, residents and fellows, and to the Keck School of Medicine. Respondent states that he "lost his way" due to mental illness and accepts full responsibility for his conduct. Respondent denies that he worked while under the influence, but concedes that he had forgotten that he was a physician 24 hours per day, seven days per week. Respondent admits he exhibited very poor judgment before entering rehabilitation, "in certain matters outside of the medical environment." He feels he was able to compartmentalize his poor judgment to his conduct outside of his professional life. This aspect of his testimony was contradicted by the evidence, unpersuasive and undermines his rehabilitation.

75. Respondent acknowledges that initially he did not accept Dr. Auerbach's opinion that he suffered from Bipolar II Disorder. He concedes that he failed to follow Dr. Auerbach's suggestions or to comply with his medication regimen. Respondent testified that he realized that he had lost his way at the beginning of 2017.

76. Respondent attended an outpatient evaluation for substance abuse treatment at the Professionals' Treatment Program at Promises on July 19, 2017. On July 25, 2017, he was admitted for inpatient treatment. Gregory E. Skipper, M.D., was the Director of Professional Health Services at Promises from 2011 until November 20, 2017, and was in charge of respondent's treatment at Promises. Respondent feels he gained insight while attending the Professionals' Treatment Program at Promises.

77. During his testimony, respondent minimized his contact with SW, CW and SW's friends. He stated that after meeting SW several times he had no plans to see her again; however, contact was reinstated when he rescued her from being held against her will in Portland. This testimony was not credible because respondent conceded that he was

infatuated with SW from the beginning, and he had purchased a laptop and other expensive items for her shortly after meeting her.

Respondent testified that during the course of their relationship, he visited SW three times per week, typically at the end of the day. SW stated that he visited her almost every day. DS stated that respondent visited them five to six days per week during the six-to-eight week period they were involved. Moreover, respondent submitted a table of expenses for clothing and other items and the dates upon which the expenses were incurred; the table indicates that respondent spent time with SW more often than three times per week. Respondent's testimony that he saw SW three times per week at the end of the day is inconsistent with other evidence and is not credible.

78. Respondent admits that he and SW smoked methamphetamine in their hotel room in Las Vegas in November 2015. Respondent reports that he missed the conference and his speaking engagement after SW drugged him with Xanax,[14] causing him to sleep through the meetings he was scheduled to attend. Respondent reports that while he was drugged, SW stole money from his checking account. Respondent states that SW apologized afterward and he accepted her apology. Respondent had never before missed a conference meeting; he attributes his behavior to an absence of judgment due to his hypomanic episode.

79. Concerning his solo traffic accident, respondent testified that in the early morning of March 8, he was unable to sleep and was hungry, so he left his home and was driving to Alhambra to purchase a snack at a 7/Eleven convenience store, when he fell asleep at the wheel.

80. Respondent denies providing any drugs to SW, CW or DS. DS initially stated that respondent provided drugs for them, but he backtracked on those statements at hearing, stating the drugs were there, but he did not see who procured them. SW and CW state that respondent provided them with methamphetamine often. Whether respondent provided and transported the methamphetamine that SW and CW consumed was not established by clear and convincing evidence; however, it is undisputed that respondent provided SW with cash and he provided SW with a safe environment to use drugs to her detriment.

81. Respondent minimized his drug use, telling both Dr. Auerbach and Dr. Skipper that he tried methamphetamine only five to 10 times, heroin only five times and marijuana a few times. SW, CW and DS all stated that respondent used methamphetamine in their presence regularly. At hearing, respondent testified that he used methamphetamine between 50 and 100 times in 2015 and 2016, and only did so with SW; however, he later admitted using drugs in 2017 when he was not in contact with SW. Respondent initially testified that he had never tried marijuana; later during the hearing, however, he changed his testimony, stating that he had used it with SW multiple times, which was consistent with his

[14] Xanax, also known as alprazolam, is a benzodiazepine and a Schedule IV controlled substance as defined by Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Business and Professions Code section 4022.

prior statement to Dr. Skipper. Respondent also denied ever abusing alcohol; this testimony conflicted with the finding by the USC Ad Hoc Committee that respondent had been observed using alcohol excessively. Overall, respondent continued to minimize his use of alcohol and controlled substances at hearing.

82. With regard to SW's overdose at the Hotel Constance on March 4, 2016, respondent stated that although he was aware she had been using methamphetamine and heroin in the days prior to her overdose, he told hotel staff, the paramedics and Officer Garcia that she had probably had too much to drink because he saw empty bottles of alcohol in the room. His testimony regarding the reason he attributed SW's overdose to alcohol was not credible. Respondent was well aware that SW was a drug addict and had recently been treated for drug addiction. The most plausible reason for giving false information was to protect himself. Hiding that information from authorities was dangerous and could have resulted in SW not receiving the treatment she needed; according to Dr. Fong, SW could have died without treatment. Respondent's request to stay in the same hotel room and his reluctance to call an ambulance, were consistent with the actions of someone who wanted to hide SW's overdose, rather than the actions of someone who was trying to assist her or rescue her. Respondent has not fully accepted responsibility for this very serious misconduct, which is troubling.

83. Respondent testified that he first met CW in July 2016 when he was 18 years old. This testimony contradicts the statements of SW and CW. It is also inconsistent with the fact that respondent prescribed inhalers for CW on December 30, 2015, and on March 20, 2016, when CW was 17 years old. Respondent's testimony that he met CW in July 2016 when he was 18 years old is not credible.

84. On October 5, 2017, while he was in treatment at Promises, respondent received a telephone call from DY; she was in a panic due to the condition of her infant. Respondent asked DY if her baby was breathing; she stated that she could not tell. Respondent hung up and called 911. Respondent testified at one point that he last spoke to DY in January 2018. He also testified that he last saw DY two months before the hearing to console her because of a newspaper article regarding her infant's death. In his testimony at hearing, respondent repeatedly minimized his relationship with DY. Respondent's ongoing contacts with DY undermine his rehabilitation.

85. At hearing, respondent repeatedly placed blame on SW and her family. Respondent provided documentation that SW had stolen money from his checking account and he claimed that she drugged him at the conference in Las Vegas. Respondent stated that he accepted her apologies for her transgressions because he was infatuated with her and was trying to rescue her; he saw great potential in her and was trying to help her. In order to help SW reach her potential, respondent could have helped her continue with drug treatment, and refused to use drugs with her. He could have stopped paying for hotels, clothing, apartments and jewelry unless she stopped using drugs. Respondent's claim that he was simply trying to rescue SW demonstrates a continued lack of insight into his misconduct.

86. During his testimony, respondent acknowledged his love for SW and noted that they had discussed the idea of getting married. He spoke of staying in the "Leo DiCaprio Suite" with her at the Plaza Hotel in New York City, and of buying her expensive jewelry at Bergdorf Goodman. He recounted taking trips with her to Boston, Las Vegas, Miami and Switzerland. Although he testified that he did these things because he was not thinking straight, respondent continued to express love for SW at hearing. Respondent's demeanor and manner of testifying about his relationship with SW vacillated between blaming her and expressing current heartfelt feelings for her. His testimony undermines his claim that he is rehabilitated.

87. Respondent acknowledges that he prescribed numerous medications for SW, despite that fact that she was not his patient, and that he did not perform an examination in a structured environment or document his treatment in a medical record. He reports that he prescribed Klonopin to SW because she suffered from anxiety after she moved back home with her family. Prescribing Klonopin to a known drug addict is ill-advised. Respondent stated that he regrets having prescribed medications to SW since she was not his patient, but claims he performed a good faith examination each time and found a medical indication for each medication.

88. In early September 2016, after respondent learned that SW had been arrested while hallucinating at the Balboa Bay Club Hotel where he had rented her a room, respondent hired an attorney for her. SW was charged with possession of controlled substances and assaulting emergency medical personnel and police officers. Respondent testified that shortly after this incident, he had nothing more to do with SW; however, this testimony was contradicted by thousands of dollars in receipts from clothing stores and jewelry stores that he attributed to purchasing items for SW in October and November 2016.

89. Respondent admits that he smoked methamphetamine between December 2016 and July 2017, after his relationship with SW ended. He claims that he obtained a small amount of methamphetamine from SW before she went into her rehabilitation program, which he stored in his garage and smoked in June 2017. Respondent reports that his wife found him smoking it, prompting him to enter a rehabilitation program in July. Respondent minimized his use of drugs in 2017; his testimony on this subject was not credible.

90. Respondent denies ever using drugs before seeing patients or going to work. He admits having brought SW and KV to his office at night on one occasion, but denies that they used drugs there. The allegation that respondent used drugs before seeing patients or while on the USC campus, was not established by clear and convincing evidence.

91. Respondent claims that SW's family extorted money from him in order to keep SW from speaking to the press about his misconduct. Respondent testified that he paid them over $25,000 to keep them quiet. Respondent provided documentation of having paid numerous bills of SW's through May 2017, and taking her mother out to lunch and to buy clothing several times in the spring of 2017. Assuming it is true that SW's family was trying

to extort money from him, respondent did not appear to recognize that the appropriate response would be to refuse to pay or to contact the police, rather than agreeing to pay them to keep quiet about his misconduct. This testimony demonstrated an ongoing lack of insight.

92. Respondent would like to return to practicing medicine and vows to remain committed to his recovery and treatment regimen. He feels he still has a lot to contribute to medicine. Respondent would like to be involved in a group practice or in an academic setting. Respondent would like to perform research and to communicate with other physicians about the dangers of substance use and mental illness. Respondent also described an interest in opening an ophthalmology screening program to serve the people of East Los Angeles.

Rehabilitation/Mitigation Evidence

TREATMENT WITH DR. DANIEL AUERBACH

93. Dr. Auerbach testified as an expert witness and submitted reports of his treatment and findings. Dr. Auerbach graduated from USC Keck School of Medicine in 1969. He completed his internship at USC and his residency at UCLA, where he served as the chief resident in the Department of Psychiatry. Dr. Auerbach has been licensed in California since 1970 and has been board-certified in neurology and psychiatry since 1976. Dr. Auerbach has been in private practice in adult psychiatry since 1974. He also practiced at the VA Greater Los Angeles Healthcare System beginning in 1974, where he served as the Associate Chief of the Department of Psychiatry and Mental Health from 1999 to 2007. From 1997 to 2007, Dr. Auerbach served as the Vice Chair of the Department of Psychiatry at the David Geffen School of Medicine at UCLA; he has continued to serve as a clinical professor at UCLA in a voluntary capacity.

94. Dr. Auerbach wrote an initial report of his findings dated October 4, 2017. During psychotherapy, respondent justified his relationship with SW by stating that he respected her intelligence and potential and believed he could rescue her from the life she was leading. Respondent expressed a virtual absence of logical reasoning, and came to believe that SW loved him and that he loved her. Based on respondent's reports, and without an examination of SW, Dr. Auerbach concluded that SW was a psychopath who was manipulating respondent in order to motivate him to provide a safe lifestyle that facilitated her drug use.

Respondent reported to Dr. Auerbach that the abuse of drugs and sex had very little to do with their relationship. Respondent acknowledged that he abused methamphetamine a few times but stated that he never had any interest in using drugs. Respondent reported that his main interest was in rescuing SW. Dr. Auerbach was aware that respondent was spending large sums of money on SW, paying for her rent, hiring lawyers to represent her, and for her attendance at substance abuse rehabilitation programs.

Dr. Auerbach opined that respondent exhibited a thinking disorder with a loss of insight into the nature and consequences of his behavior. Dr. Auerbach found respondent to be completely indifferent to the reality that his behavior could have dire consequences.

95. In his October 2017 report, Dr. Auerbach stated: "Toward the end of 2016 and early 2017, he fully realized what he had done, the potential damage it could do to him and the effect it would have on those he cared about." Dr. Auerbach noted that respondent had entered a residential substance abuse treatment program on July 24, 2017; however, Dr. Auerbach reported that respondent did not have a substance abuse problem. Dr. Auerbach attributed respondent's attendance to his occasional use of illicit substances and because the 12-Step program resonated for respondent in that he was able to realize that he was addicted to his relationship with SW.

96. Dr. Auerbach prepared a supplemental report of respondent's condition dated March 1, 2018, in which he reported respondent continued in weekly psychotherapy and was compliant in pharmacologic treatment. Respondent no longer experienced symptoms of hypomania and he considered respondent to be in sustained remission. Dr. Auerbach also reported that respondent felt intense remorse and sadness that he did not appreciate the consequences of his actions. Respondent had by then acknowledged that he did "try methamphetamine, heroin, and marijuana on a number of occasions while hypomanic."

97. On April 24, 2018, after having read the accusation and the Board's investigation report, the statements and declarations by SW, CW, DS, a statement by respondent's former assistant at USC, Deonda Stafford, expert reports by Dr. Fong, Gregory Skipper, M.D., respondent's monitoring and drug testing agreements, and the USC Ad Hoc Committee Report, Dr. Auerbach issued a report of his opinions. He opined that from July 2015 until August 2017, respondent was impaired by his Bipolar II Disorder and the occasional use of illicit drugs while not at work. Dr. Auerbach reported that respondent's behavior with SW was fully explained by an episode of hypomania. Dr. Auerbach reiterated that respondent did not suffer from a primary substance abuse disorder.

98. At hearing, Dr. Auerbach opined that respondent's goal during 2015 and 2016 was to rescue SW from a life of drug abuse. Dr. Auerbach believed what respondent told him was the truth. Dr. Auerbach repeatedly advised respondent to comply with treatment and to stop seeing SW, but respondent refused.

Dr. Auerbach stated that although he had prescribed Lamictal in December 2015, respondent did not fully comply with taking it; in the beginning of 2016, after he began to take the medication more regularly, his mood began to normalize and he gained insight into his behavior. The basis for his thought disorder was respondent's hypomania, which, according to Dr. Auerbach was compartmentalized and did not affect his ability to practice medicine safely. Dr. Auerbach acknowledged that he would have an obligation to report respondent to authorities if he felt respondent was impaired at work; however, he never felt that way. Dr. Auerbach emphasized that respondent appeared regularly and promptly for his weekly 7:45 a.m. appointments dressed in a suit. He did not observe any signs of

intoxication. Dr. Auerbach was unaware that respondent was not carrying out his functions as Dean. Dr. Auerbach recently became aware that respondent was in much worse shape than he had realized. Dr. Auerbach is now aware that respondent continued to use methamphetamine, and possibly heroin until June 2017, and that he does meet the criteria for Substance Use Disorder. Dr. Auerbach considers respondent's prognosis for remission from Substance Use Disorder to be excellent.

Dr. Auerbach opined that respondent had emerged significantly from his hypomanic episode and ended his involvement with SW's circle of friends by the beginning of 2017. Dr. Auerbach understands that respondent continued to maintain contact with one of SW's friends, DY, until recently. He believes that respondent was no longer hypomanic at that time, but was trying to be supportive of DY during her pregnancy. Respondent told Dr. Auerbach that in March 2017, SW's family "blackmailed" respondent in the amount of $25,000; respondent was hopeful that if he paid them, they would keep his misconduct quiet. Dr. Auerbach did not recommend that respondent report the incident to the police.

99. Dr. Auerbach noted that Bipolar II Disorder is a chronic condition and that respondent will need to continue taking medication for his lifetime, and will require ongoing monitoring. Dr. Auerbach considers the likelihood of respondent's non-compliance in the future to be very low. He does not consider respondent to pose any danger to the public. At hearing and in his reports, Dr. Auerbach opines that respondent is safe to return to practice.

TREATMENT AT PROMISES WITH DR. GREGORY SKIPPER

100. Dr. Skipper testified as an expert at hearing. Dr. Skipper earned his medical degree at the University of Alabama School of Medicine in 1974. He completed an internship and residency in internal medicine in 1978 at the University of California, San Diego. He was the Medical Director of the Chicano Community Care Clinic from 1978 until 1980. Dr. Skipper was a member of a group practice in internal medicine and cardiology in Oregon from 1980 to 1995. He was a consultant in addiction medicine at Springbrook (later Springbrook Hazeldon) in Oregon from 1989 to 1995, and served as the Medical Director there from 1995 until 1999. Dr. Skipper returned to his home state of Alabama to serve at the Medical Director of the Alabama Physician Health Program between October 1999 until August 2011, when he returned to California to accept a position at Promises. In November 2017, Dr. Skipper left Promises to become the Medical Director of the Center for Professional Recovery: Professionals Treatment Program and Comprehensive Diagnostic Evaluation Program.

101. Dr. Skipper authored three reports on respondent's rehabilitation: an inpatient program discharge summary dated September 9, 2017; a final discharge summary dated November 15, 2017; and a follow-up evaluation dated April 16, 2018.

102. In the September 9, 2017 summary, Dr. Skipper reported that respondent's difficulties began in March 2015 when he met SW who was working as an escort and had an affair with her that lasted on and off for almost two years. Respondent told Dr. Skipper that

SW told him that she smoked methamphetamine, that he was not interested and encouraged her to stop, but that a few months later he tried it. (Respondent admitted at hearing that he did use methamphetamine with SW during their first meeting.) Respondent told Dr. Skipper that he used methamphetamine at her apartment about 10 times total. Respondent also told Dr. Skipper that in late 2016 he first tried heroin without knowing what it was and used it a total of approximately five times. Respondent also admitted using ecstasy approximately three times and smoking marijuana a few times. Respondent told Dr. Skipper that he had not seen SW since December 2016, but had continued to use drugs a few times until June or July 2017; he was unsure whether he had last used methamphetamine or heroin. It concerned Dr. Skipper that respondent had continued to use illicit drugs after his relationship with SW ended because he understood respondent's conduct to be connected to his infatuation with SW. Respondent reported his longest period of sobriety as three months off of methamphetamine and heroin, but he drank alcohol socially during this time. Dr. Skipper considered respondent to be minimizing his drug use and the consequences of it, which he stated is typical of individuals with Substance Use Disorder.

Respondent explained to Dr. Skipper that he had been bored with his job and became obsessed with SW. Respondent told Dr. Skipper that he did not use drugs around patients because he was on sabbatical during that time period. (Actually respondent was not on sabbatical.) Regarding SW's overdose, respondent told Dr. Skipper that he discovered her unresponsive in a hotel room and called 911 to summon an ambulance, unaware that there were drugs in the room or what she had taken. This description of the event was not truthful.

103. A psychological assessment conducted in July 2017, by Laura Dorin, Ph.D., at Promises, revealed that respondent was hypomanic during the interview and a thought disorder was evident from Rorschach testing. Monica Blauner, L.C.S.W., performed a psychosexual evaluation and noted that respondent talked obsessively about SW, and that the overarching theme was that he emotionally rescues women, calling himself "Captain Rescuer."

104. Respondent attended inpatient treatment at Promises between July 25, 2017, and August 23, 2017. Dr. Auerbach participated in his treatment. Weekly treatment included two hours or more of individual psychotherapy, one hour or more of family therapy, regular meetings with Dr. Skipper, 32 hours of group therapy and six hours of professional-specific programming. Respondent also participated in daily mutual-support groups and was active in the professionals' program. Respondent was tested for drug use and utilized a breathalyzer device at least twice daily; all results were negative. Urine tests were observed to ensure the patient is providing the sample.

105. Dr. Skipper reports that respondent complied with treatment and improved. Dr. Skipper's evaluation was based on respondent's interview, discussions with respondent's wife and Dr. Auerbach, and respondent's performance in treatment. Dr. Skipper did not review the statements of SW and CW. Dr. Skipper reached discharge diagnoses by using the DSM-5, based on respondent's statements. Dr. Skipper notes that respondent may have lacked insight into his drug use when the diagnoses were made; and, some of the diagnostic

questions can be considered debatable. For example, respondent stated that he had not spent a lot of time using controlled substances and Dr. Skipper did not have evidence to the contrary. Respondent's substance use appeared to him to be sporadic and a result of his Bipolar II Disorder.

Based on respondent's reports, Dr. Skipper's diagnoses were: 1) Bipolar II Disorder (in partial remission); 2) other specified sexual dysfunction; 3) Amphetamine Use Disorder (moderate); 4) Opioid Use Disorder (mild); 5) Hallucinogen Use Disorder (mild); 5) Tobacco Use Disorder (moderate); and 6) occupational problems and narcissistic personality features. As of September 9, 2017, Dr. Skipper opined that respondent was fit to work with recommended monitoring, but noted he would not be working until he completed outpatient treatment, when he would be reevaluated.

106. Respondent attended outpatient treatment at Promises from August 23, 2017, until November 8, 2017. Outpatient treatment meetings were three to four half-days per week. At the end of the outpatient treatment, respondent was referred to monitoring with licensed clinical psychologist Helene O'Mahony, Ph.D. Dr. Skipper recommended that respondent enter into a five-year monitoring agreement including: 1) an agreement to remain abstinent from alcohol and addictive drugs; 2) participation in random alcohol and drug testing; 3) attendance at 12-step meetings on a regular basis (at least two meetings weekly); 4) participation in ongoing monitoring with Dr. O'Mahony; and 5) participation in ongoing psychotherapy with Dr. Auerbach.

107. On November 15, 2017, Dr. Skipper opined that respondent was fit to return to duty as long as all aftercare recommendations were followed.

108. On April 4, 2018, Dr. Skipper performed a follow-up evaluation of respondent's rehabilitation. Dr. Skipper concluded that respondent's Bipolar II Disorder, Amphetamine Use Disorder, Opioid Use Disorder and Hallucinogen Use Disorder were all in sustained remission. Dr. Skipper again opined that respondent was fit to return to duty as long as all aftercare recommendations were followed.

109. As of the date of the hearing, Dr. Skipper believes that respondent's return to practice would benefit him and benefit the public. However, Dr. Skipper advised against respondent engaging in a solo practice for the following reasons: 1) at respondent's age it would be difficult to start a solo practice; 2) a group practice would allow for support from colleagues who could keep an eye on him; 3) his expertise lends itself to contributing to other specialists; and 4) a solo practice is stressful. He feels that waiting a year after recovery begins to return to work seems excessive; however, he agreed that the combination of Bipolar II Disorder and Substance Use Disorder involves a more complicated recovery, with a greater risk of public harm and a higher likelihood of future issues. Dr. Skipper considers it important for respondent to remain fully compliant with his Bipolar II Disorder medications.

Dr. Skipper reviewed the statements of SW, CW and DS before the hearing. These statements described a much greater use of methamphetamine than respondent had described. Assuming that respondent used methamphetamine more frequently that he had reported, this fact would not affect Dr. Skipper's opinions. Dr. Skipper cited studies that indicate physicians have better outcomes following treatment for Substance Use Disorders; however, it was not indicated that these studies involve physicians also suffering from Bipolar II Disorder.

An article in the Los Angeles Times in January 2018 suggested that respondent continued to be in contact with SW's friends in October or November 2017; Dr. Skipper reported that he would be concerned if respondent continued to associate with drug users. Dr. Skipper was not aware of respondent's involvement with DY, another woman in SW's circle of friends. Dr. Skipper opined that failing to comply with his medication regimen, engaging in relationships with drug users, continuing to use escort services, or failing to comply with the monitoring agreement, could lead to a relapse.

CONTINUING OUTPATIENT TREATMENT

110. Beginning on November 3, 2017, respondent has submitted to random urine tests. The urine samples are tested for amphetamine, methamphetamine, barbiturate, benzodiazepine, cannabinoid, cocaine, opiate, phencyclidine, meperidine, methadone, propoxyphene, tramadol and ethanol. The tests, through April 30, 2018, have all been negative. However, the urine tests are not observed; instead, the individual arriving for the test removes his or her jacket and his or her pockets are patted down; an employee waits outside of a bathroom while he provides the sample. The fact that the individual is not directly observed while the sample is provided significantly weakens the reliability of the testing.

111. On November 13, 2017, respondent entered into an agreement with Flying Knee, Inc., run by Dr. O'Mahony, to join the Flying Knee Physicians Support Group. The group is a physician-specific treatment group that meets Tuesday evenings. All participants are physicians in recovery. Dr. O'Mahony reported on February 20, 2018, that respondent had been attending meetings consistently, and actively participating. Dr. O'Mahony reported further that respondent seemed highly motivated to stay sober, and that he attended 12-Step/Narcotics Anonymous meetings several times each week and was working with a sponsor.

CONTINUING MEDICAL EDUCATION

112. Respondent attended the Medical Ethics and Professionalism Course portion of the PBI ME-22 ethics program offered by Professional Boundaries, Inc., on January 19 and 20, 2018. Respondent is required to complete a follow-up component of the program to receive a certificate of completion for the ethics program. He has completed 22 credit hours including eight hours of pre-course work and 14 hours from the two-day live portion.

From March 9 through 11, 2018, respondent attended the Extended PBI Professional Boundaries and Ethics course, receiving 34 hours of credit. A second course requiring an additional 12 hours of activity is required to complete the program.

113. On January 22 through 24, 2018, respondent completed a Prescription Prescribing course offered by the University of California, San Diego School of Medicine (UCSD). He was awarded 27 hours of credit.

114. On January 25 and 26, 2018, respondent completed a Medical Record Keeping course offered by UCSD. He received 17 hours of credit.

115. Respondent reports taking a total of 24 hours of continuing medical education in ophthalmology in February, March and May 2018.

Character Evidence

116. Dr. Ford became the Dean of the Miller School of Medicine at the University of Miami on June 1, 2018. Respondent and Dr. Ford worked together very closely at USC; they interacted at least weekly. Dr. Ford testified at hearing regarding his opinions of respondent's character. Dr. Ford never observed respondent to be under the influence at work. Dr. Ford considers respondent to have been one of the most dynamic leaders he has ever observed. Dr. Ford found respondent to be passionate about excellence, a visionary leader committed to taking the Keck School of Medicine to new heights, and as having a talent for identifying and recruiting new faculty members while creating an environment in which to thrive. Dr. Ford acknowledges that respondent could intimidate staff members and that his style could be abrasive at times. Dr. Ford confronted respondent about the complaints around 2010; Dr. Ford reports that respondent listened and made changes. Dr. Ford observed an improvement in respondent's behavior afterward. Dr. Ford credits respondent with transforming the Keck School of Medicine to a top tier medical institution.

After the Los Angeles Times article was published in July 2017, Dr. Ford contacted respondent, concerned for his wellbeing. They had a long conversation and Dr. Ford felt like respondent had returned to his prior self, but was more introspective. Respondent told Dr. Ford that he had gotten involved in a bad relationship, started experimenting with drugs, and had lost his way. Dr. Ford has not examined the details of the misconduct or any post-recovery allegations. Dr. Ford considers respondent to be a brilliant individual who still has a lot to offer to society and to patients. Based on his conversations with respondent, Dr. Ford believes that respondent is committed to his recovery.

117. Elias Reichel, M.D., is a Professor and Vice Chair of Ophthalmology and the Director of Vitreoretinal Service at the New England Eye Center of the Tufts University School of Medicine. Dr. Reichel has been in practice at Tufts for 24 years. Dr. Reichel submitted a character reference letter and testified at hearing.

Dr. Reichel first met respondent in 1989 when he was a resident at the Massachusetts Eye and Ear Infirmary at Harvard Medical School. Dr. Reichel completed his fellowship at the New England Eye Center when respondent was the Chair of the Department of Ophthalmology. Dr. Reichel has worked closely with respondent and considers him a mentor and a friend. They have published together frequently. Dr. Reichel has observed respondent to have angry outbursts with residents, but he also observed respondent apologize and try to make it up to them. Despite this, he considers respondent to be a caring individual.

Dr. Reichel has read the accusation and newspaper articles regarding respondent's misconduct; he has had close contact with respondent concerning the allegations and believes respondent has been honest with him. Dr. Reichel considers respondent's misconduct to be completely out of character. He was totally shocked by the allegations and can only rationalize it as being due to a mental health condition. Dr. Reichel has never observed respondent to be impaired at work or at conferences. Dr. Reichel did not notice any changes in his behavior during the period of 2015 to July 2017.

Dr. Reichel has been in telephonic contact with respondent every two to three weeks since July 2017. Dr. Reichel reports that respondent has expressed remorse and has accepted responsibility for his conduct during their conversations, although they did not discuss the allegations in detail and he has a limited understanding of the circumstances involved. Dr. Reichel hopes that respondent is able to return to the practice of medicine; he believes respondent has much to contribute in research, teaching and patient care. Dr. Reichel would support an offer for respondent to be involved in the Reading Center at the New England Eye Center.

118. Audina M. Berrocal, M.D., is a Professor of Clinical Ophthalmology, the Medical Director of Pediatric Retina and Retinopathy of Prematurity, and the Vitreoretinal Fellowship Director at the Bascom Palmer Eye Institute at the University of Miami Miller School of Medicine. Dr. Berrocal wrote a character letter and testified at hearing in support of respondent's continued licensure. Dr. Berrocal has known respondent professionally since 1996 when she started her three-year residency in ophthalmology at the New England Eye Center at Tufts. She was at the Bascom Palmer Eye Institute in 2001 when respondent became the Chair of the Department of Ophthalmology. Dr. Berrocal reports that respondent revived the Bascom Palmer Eye Institute by recruiting new people and bringing in new technology. She attributes some of the most effective treatments for macular degeneration and diabetic retinopathy to respondent's research and leadership.

While they worked together at Tufts and Bascom Palmer, respondent and Dr. Berrocal saw one another often. After he left to assume the deanship at USC, Dr. Berrocal saw respondent five to seven times per year at meetings. She has never noted any impairment of his judgment, or concluded that he was under the influence of alcohol or a drug.

Dr. Berrocal considers respondent to be an energetic and highly demanding leader. She is not surprised that he has been diagnosed with Bipolar Disorder II based on her

observations of respondent. She never observed respondent's mood swings to affect patient care; however she did observe him become angry at people.

Dr. Berrocal considers respondent to be honest. When she reviewed the allegations of his misconduct, she was shocked. Dr. Berrocal is not familiar with the details of the allegations; she understands that he was diagnosed with a mental health disorder and became obsessively involved with a woman. Since the allegations have come to light, respondent has appeared more engaged and focused. Dr. Berrocal believes that respondent is remorseful and she believes that respondent still has a lot to contribute to medicine.

119. David S. Boyer, M.D., is a Clinical Professor of Ophthalmology at the Keck School of Medicine. He is in private practice as a senior partner at the Retina-Vitreous Associates Medical Group, where he has worked for over 40 years. Dr. Boyer has known respondent casually for many years, and more closely for the past 12 to 15 years. Over the course of his career, Dr. Boyer has worked with respondent in various capacities. He has attended and participated in conferences run by respondent, served on scientific advisory boards with him, shared patients with him and has sent patients to consult with respondent. Dr. Boyer considers respondent to be a leader in the field of ophthalmology. Dr. Boyer has never seen a patient who had been misdiagnosed or inappropriately treated by respondent, including the patients he inherited from respondent when he stopped practicing.

Dr. Boyer has never observed respondent to be under the influence of drugs or alcohol. He considers respondent's misconduct to be very serious and he had a long, frank discussion with him about it. Dr. Boyer understands that respondent is working on his rehabilitation with therapy and medication.

120. Deonda Stafford was temporarily employed at the Keck School of Medicine beginning in January 2016, through an agency that worked with the Dean's office. Stafford submitted a declaration and testified at hearing. Stafford received training equivalent to that received by a licensed vocational nurse while serving in the United States Navy in 2002.

Stafford worked in the Dean's office until respondent resigned as Dean. During that time period, she regularly observed respondent. In January 2017, Stafford was assigned as respondent's administrative assistant. In this capacity, Stafford saw respondent two to three times per week, scheduled his patients and was present during his patient examinations. Residents and/or fellows were also present during examinations. Respondent saw between nine and 16 patients at his office at USC on the second Monday each month, and at his Beverly Hills clinic on the fourth Monday of each month. Stafford continued in this capacity until respondent went out on leave in July 2017. Stafford considered respondent to be an excellent physician. She did not see any signs that respondent was under the influence of a drug or alcohol at any time she worked with him. Stafford was shocked by the allegations.

121. Pravin U. Dugel, M.D., is a managing partner at Retinal Consultants of Arizona, a Clinical Professor that the Eye Institute at the Keck School of Medicine and the Physician Executive Director of the Banner Phoenix Eye Institute. Dr. Dugel has known

respondent as a mentor, colleague, trusted advisor and friend for many years. He wrote a character reference in support of respondent. Dr. Dugel considered respondent one of the most inspirational figures in ophthalmology. Dr. Dugel considers the allegations of misconduct against respondent to be very out of character. Dr. Dugel believes respondent's continued absence from the field of ophthalmology would have a profoundly negative impact.

Expert Opinion Analysis and Ultimate Factual Findings

122. Respondent is a highly educated individual who has contributed significantly to the medical profession. He managed his undiagnosed Bipolar II Disorder for 64 years without apparent significant issues. When respondent's hypomanic episode took hold and he lost his judgment, his conduct became known to his wife, psychiatrist and colleagues at USC; despite the obvious danger to the public, no action was taken to alert authorities. Respondent's larger than life personality and accomplishments allowed his illness to blossom without restraint to the detriment of others.

123. Dr. Auerbach believed what respondent told him and as a result, was misinformed on many issues. For example, Dr. Auerbach understood that respondent used methamphetamine very rarely, which was not correct. In addition, Dr. Auerbach believed that respondent gained insight into his misconduct at the beginning of 2016, which is not supported by the evidence. Respondent continued to lack insight in 2017, while he was taking DY on vacations to Hawaii, St. Louis and Israel, and paying SW's family so they would not speak to the press. Finally, Dr. Auerbach opined that while respondent was using heroin and methamphetamine, in the midst of a severe manic episode, and spending large amounts of time with a 20-year-old drug addict, he posed no danger to the public by continuing to maintain an unrestricted license. This opinion is rejected and undermines Dr. Auerbach's credibility as an expert. Dr. Auerbach's opinion that respondent's Bipolar II and Substance Use Disorders have been treated and are in remission, and that respondent is not currently impaired by those conditions is unpersuasive.

124. Dr. Skipper is an expert in substance abuse treatment, but is not a psychiatrist. He was less willing to trust everything that respondent was telling him. Nevertheless, he was convinced that as of September 9, 2017, respondent was fit for duty under monitoring. This opinion that respondent was fit for duty with monitoring after only two and one-half months of treatment is unpersuasive in light of respondent's extended period of serious drug abuse, combined with his Bipolar II Disorder, resulting in conduct that demonstrated an utter absence of judgment.

At hearing, Dr. Skipper opined that at this point, in light of his continued rehabilitation efforts, respondent is currently fit to return to practice with monitoring. However, he agreed that respondent's continued communication with drug users would concern him. The evidence established that in October 2017 and January 2018, respondent was in contact with DY, who is a known drug user. The evidence also established respondent was more involved and had more frequent contact with DY than had been

documented in Dr. Skipper's reports. In addition, respondent's testimony at hearing lacked insight which undermined evidence of rehabilitation. Much of this information does not appear to have been considered by Dr. Skipper, which weakens his opinion.

125. Dr. Fong did not examine respondent, which has been considered; however, he does not disagree with the diagnoses made by respondent's treating physicians. Dr. Fong's opinions were independent and convincing. In Dr. Fong's opinion, respondent is impaired by Substance Use Disorder. He accepts Dr. Auerbach's opinion that respondent also suffers from Bipolar II Disorder, which in Dr. Fong's opinion, complicates his recovery. Dr. Fong opined that when a mood disorder progresses for two years, long term treatment is necessary, with a comprehensive treatment plan including medication, therapy and support. Dr. Fong persuasively opined that respondent is currently impaired by his Substance Use Disorder, which is complicated by his Bipolar II Disorder, and that as a result his competency to practice medicine is affected. Dr. Fong's opinion that respondent is very early on in the recovery from two very significant psychiatric disorders and his return to work at this time could jeopardize his health and the health and safety of others is persuasive.

126. Dr. Fong's opinions regarding respondent's numerous extreme departures from the standard of care were uncontradicted and persuasive.

LEGAL CONCLUSIONS

Introduction

1. The purpose of an administrative proceeding concerning licensure is not to punish the respondent, but rather is "to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted]." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) While the objective, wherever possible, is to take action that is calculated to aid in the rehabilitation of the licensee, protection of the public shall be paramount. (Bus. & Prof. Code, § 2001.1.)

2. The standard of proof regarding the charging allegations is "clear and convincing" and the burden of proof is on complainant. (*Ettinger v. Board of Medical Quality Assurance*, *supra*, 135 Cal.App.3d at 856; see also *Medical Board of California v. Superior Court (Liskey)* (2003) 111 Cal.App.4th 163, 170-171.) This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit and unequivocal – so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

Mental Illness Affecting Competency

3. Business and Professions Code section 822 provides that if the Board determines that a physician's ability to practice medicine safely is impaired because of mental illness affecting competency, the Board may: a) revoke the physician's certificate; b)

suspend the physician's right to practice; c) place the physician on probation; or d) take other appropriate action.

Complainant alleges that respondent is impaired due to his Substance Use Disorder. Drs. Fong, Skipper and Auerbach agree that respondent suffers from Substance Use Disorder. The extent of respondent's impairment due to his Substance Use Disorder is affected by his Bipolar II Disorder, which complicates his recovery. Both Substance Use Disorder and Bipolar II Disorder are lifelong, chronic conditions that require ongoing treatment. The evidence established that respondent is impaired by mental illness, which affects his competency. (Factual Findings 60 to 67 and 125.) Cause for taking action against respondent's certificate exists pursuant to Business and Professions Code section 822.

Unprofessional Conduct: Dishonest Acts

4. Business and Professions Code section 2234, subdivision (e), authorizes the Board to impose discipline against any licensee who is charged with unprofessional conduct, including the commission of an act involving dishonesty related to the qualifications, functions or duties of a physician. Respondent was dishonest with emergency and police personnel following SW's overdose. Respondent dishonestly represented himself repeatedly as SW and CW's physician in writing numerous prescriptions for them. (Factual Findings 21 through 36, 44 and 48.) Cause for discipline exists pursuant to Business and Professions Code section 2234, subdivision (e).

Unprofessional Conduct: Violation of Drug Statutes

5. Business and Professions Code section 2238, authorizes the Board to impose discipline on a licensee who violates any statute regulating dangerous drugs or controlled substances. Respondent repeatedly used illicit controlled substances. He wrote prescriptions for a controlled substance and dangerous drugs for SW, who was not his patient. Respondent prescribed a dangerous drug to CW, a minor who was not his patient. (Factual Findings 7, 12, 44, 48, 49 and 81.) Cause for discipline exists pursuant to Business and Professions Code section 2238.

Unprofessional Conduct: Misuse of Controlled Substances and Alcohol

6. Business and Professions Code section 2239, subdivision (a), authorizes the Board to impose discipline on a licensee who uses any controlled substance, or uses any dangerous drug as specified in Business and Professions Code section 4022, or alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee or to any other person or to the public, or to the extent that it impairs the ability of the licensee to practice medicine safely. Respondent repeatedly used illicit controlled substances with SW, a known drug addict. He wrote prescriptions for a controlled substance and dangerous drugs for SW, who was not his patient. Respondent prescribed a dangerous drug to CW, a minor who was not his patient. Respondent provided alcohol and marijuana to CW, while

CW was a minor. (Factual Findings 7, 12, 44, 48, 49 and 81.) Cause for discipline exists pursuant to Business and Professions Code section 2239, subdivision (a).

Unprofessional Conduct: Administering Controlled Substances to Himself

7. Complainant alleges that respondent also violated Business and Professions Code section 2239, subdivision (a), citing numerous factual allegations, and specifically, practicing medicine on the same day as using drugs of abuse; and by purchasing illicit drugs and transporting them in his vehicle. The declarations of SW, CW and DS in support of these two allegations did not rise to the level of clear and convincing evidence. However, the evidence did establish that respondent administered controlled substances to himself, constituting cause for discipline pursuant to Business and Professions Code section 2239, subdivision (a). (Factual Findings 7, 12 and 81.)

Unprofessional Conduct: Prescribing, Dispensing or Furnishing Dangerous Drugs

8. Business and Professions Code section 2242 defines unprofessional conduct to include prescribing, dispensing or furnishing dangerous drugs as defined in Business and Professions Code section 4022 without an appropriate prior examination and a medical indication. Respondent wrote prescriptions for a controlled substance and dangerous drugs for SW, who was not his patient. He did not perform an examination in a structured environment or document a medical indication in a medical record. Respondent prescribed a dangerous drug and provided alcohol and marijuana to CW while he was a minor. Respondent did not perform an examination in a structured environment or document a medical indication in a medical record. (Factual Findings 44, 48 and 49.) Cause for discipline exists pursuant to Business and Professions Code section 2242.

Unprofessional Conduct: Knowingly Making or Signing a Document Directly Related to the Practice of Medicine that Falsely Represents an Existence of a State of Facts

9. Business and Professions Code section 2261 defines unprofessional conduct to include knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine which falsely represents the existence of a state of facts. Respondent knowingly signed many prescriptions for SW and at least one for CW, which falsely represented that they were his patients. (Factual Findings 44, 48 and 49.) Cause for discipline exists pursuant to Business and Professions Code section 2261.

Unprofessional Conduct: Failing to Maintain Adequate and Accurate Medical Records

10. Business and Professions Code section 2266 defines unprofessional conduct to include the failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to his or her patients. Respondent prescribed medications for SW and CW without maintaining a medical record. (Factual Findings 44, 48 and 49.) Cause for discipline exists pursuant to Business and Professions Code section 2266.

Unprofessional Conduct

11. Business and Profession Code section 2234 authorizes the Board to impose discipline on a licensee who has committed unprofessional conduct. Respondent's use of illicit controlled substances, his dishonest statements to emergency and police personnel, and his prescribing to SW and CW constitute unprofessional conduct. (Factual Findings 7, 12, 44, 48, 49 and 81.) Cause for discipline exists pursuant to Business and Professions Code section 2234.

Disciplinary Considerations

12. Cause for discipline having been established, the issue is the appropriate measure of discipline. Business and Professions Code section 2229 mandates that the protection of the public shall be the highest priority for the Board. Section 2229 further specifies that, to the extent not inconsistent with public protection, disciplinary action shall be calculated to aid in the rehabilitation of licensees. To implement the mandates of section 2229, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines, (12th ed. 2016) (Guidelines) and the Uniform Standards for Substance-Abusing Licensees (2015) (Uniform Standards).

The minimum recommended discipline for the Business and Professions Code sections respondent has violated ranges from revocation, stayed during a five-year probationary period, to revocation, stayed with seven-year period of probation and a one-year suspension (§ 2234, subd. (e)). The maximum recommended discipline is revocation. Complainant recommends revocation. Respondent requests a probationary license with substance abuse conditions.

13. Respondent has undoubtedly made significant and long lasting contributions to the field of ophthalmology. His leadership has resulted in institutions being recognized for excellence, and he has been a mentor to many physicians. Respondent has provided excellent care to many patients. Respondent's return to the practice of medicine when he is safe to do so will benefit the public and is the goal of all concerned.

The purpose of physician discipline by the Board is not penal but to protect the life, health and welfare of the public and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, dangers which could result from a lack of honesty and integrity. (*Furnish v. Board of Medical Examiners* (1957) 149 Cal.App.2d 326.)

IMPAIRMENT AFFECTING COMPETENCY

14. The evidence established that respondent suffers from Substance Use Disorder, which affects his competency. His recovery is complicated by a comorbid condition, Bipolar II Disorder.

Dr. Fong opined that respondent's Substance Use Disorder impairs his ability to practice medicine safely and that evidence of at least 12 months of sustained, documented remission, followed by an independent medical examination finding him fit for duty, and a return to work plan including a supervised environment with monitoring by individuals familiar with respondent's medical condition and past misconduct, must be provided before respondent should be considered safe to return to practice, even while on probation under strict monitoring. Respondent has attended substance abuse treatment for nearly 12 months; however, his drug testing has not been observed and is therefore not considered reliable. The evidence established that respondent has maintained contact with drug abusers, which calls into question the efficacy of his substance abuse treatment.

Moreover, respondent's testimony at hearing, during which he continued to minimize his misconduct and demonstrated a lack of insight, supports Dr. Fong's opinion that it is too soon for respondent to return to practice. The goal of license discipline is the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) At this time, the evidence establishes that mental illness impairs respondent's ability to practice safely, warranting revocation of respondent's certificate.

UNPROFESSIONAL CONDUCT

15. Complainant also requests the imposition of license discipline due to respondent's unprofessional conduct. Respondent committed numerous extreme departures from the standard of care. His misconduct occurred over a lengthy period, and in some cases, such as writing prescriptions for SW and using illicit substances, it occurred repeatedly. Respondent's misconduct was very dangerous to SW, very damaging to his family and career, and was potentially harmful to his patients.

16. In determining the appropriate disciplinary penalty for unprofessional conduct, the seriousness of the misconduct is a factor. (*Marie Y. v. General Star Indem. Co.* (2003) 110 Cal.App.4th 928.) Respondent showed an appalling lack of judgment in using methamphetamine and heroin repeatedly over a lengthy period and by spending an inordinate amount of time with a troubled and drug-addicted young woman and her friends, while holding the position as the Dean of the Keck School of Medicine. His failure to seek appropriate treatment for SW when she suffered an overdose and his misstatements to medical personnel constitute shocking behavior by a physician. Around that time, his poor behavior resulted in the loss of his deanship. Despite what he should have understood to be a startling career setback, respondent continued ignoring his psychiatrist's advice and medication regimen. Respondent's misconduct was extremely serious.

17. The seriousness of respondent's misconduct must be balanced against his evidence of rehabilitation. In matters involving serious transgressions, a very strong showing of rehabilitation is required. The burden of establishing rehabilitation is on respondent and

the standard of proof is a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164; Evid. Code, §§ 115, 500.)

18. It is acknowledged that respondent has taken a medical record keeping course, an ethics course, a physician prescribing course and other continuing medical education, and has vowed not to repeat his misconduct; he has continued psychotherapy and medication management with Dr. Auerbach, has completed substance abuse treatment and has attended ongoing outpatient treatment.

19. Conversely, it is noted that respondent's larger than life personality and accomplishments allowed him to hide his misconduct from all but those in his immediate circle for nearly two years; and those who were aware of it never alerted authorities to help safeguard the public. In order to establish he is safe to return to practice, respondent must demonstrate that his Bipolar II Disorder and his Substance Use Disorder are stable and his recovery is secure.

The evidence established that respondent remains in the midst of his rehabilitation. Respondent appears to be continuing to attend meetings regularly, which is critical and weighs in his favor. The urine samples respondent has provided since leaving Promises were not observed and therefore the reliability of the test results is suspect. Respondent is encouraged to make arrangements for testing with a facility that observes him providing the samples.

Beyond attending psychotherapy and substance abuse treatment meetings, however, it is important for rehabilitation to fully accept responsibility for one's misconduct. The expression of remorse and the taking of responsibility for past misconduct are relevant in assessing rehabilitation, just as the absence of remorse and the failure to take responsibility are aggravating factors. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 [fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation].) The Board properly may take into account an accused physician's attitude toward the disciplinary proceeding and his character as evidenced by his behavior and demeanor at trial. (*Landau v. Superior Court* (1988) 81 Cal.App.4th 191, 223; *Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1059.)

During his testimony, respondent vacillated between stating that he was accepting responsibility for his misconduct, expressing his love for SW, blaming SW and her family, and finally repeatedly pointing to his manic episode to explain his behavior. He appeared most sincere when expressing his love for SW and recounting the time they spent together. Respondent's testimony lacked insight and was inconsistent with one who has fully accepted responsibility for his misconduct.

20. In addition to accepting responsibility for one's misconduct, a physician must establish that he or she is honest, has good judgment and has integrity. Respondent was dishonest on many occasions to many different people in 2015, 2016 and 2017. He lied to hotel staff, paramedics and Officer Garcia. He misrepresented his relationship with SW and

CW in prescribing medications for them on numerous occasions. He was untruthful when he told Dr. Auerbach that he was simply trying to rescue SW, and was untruthful when he told Dr. Skipper that he did not use methamphetamine for the first several months after meeting SW. He was also untruthful regarding the frequency of his drug use.

Dr. Skipper noted that it is not uncommon for someone suffering from Substance Use Disorder to minimize his or her misconduct during treatment. Respondent asserts that his untruthfulness was due to his thought disorder during his manic episode. He contends that because these conditions are now stable, his word can be trusted. However, at hearing respondent continued to minimize his misconduct and his testimony lacked complete candor, raising ongoing concerns about his honesty and his rehabilitation. In order for the Board to approve of respondent's return to practice, he needs to demonstrate that he is rehabilitated to the extent that he is truthful and can be trusted.

Respondent has made some important strides toward his rehabilitation and he hopes to continue contributing to the practice of medicine; however, the evidence did not establish that his rehabilitation has progressed to the point that would justify allowing his continued licensure, even on a restricted basis. Protection of the public warrants revocation of respondent's certificate due to his unprofessional conduct.

ORDER

Physician's and Surgeon's Certificate No. G 88200, issued to Carmen Anthony Puliafito, M.D., is revoked by reasons of Legal Conclusions 3 and 14, and 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19 and 20, jointly and severally.

DATED: July 3, 2018

DocuSigned by:
Jill Schlichtmann
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Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CARMEN ANTHONY PULIAFITO, M.D. 1365 South Los Robles Avenue Pasadena, California 91106-4318 Physician and Surgeon's Certificate G 88200, Respondent.	Case No. 800-2017-034712 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On January 4, 2008, the Board issued Physician and Surgeon's Certificate number G 88200 to Carmen Anthony Puliafito, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

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3. On September 22, 2017, an Order on Petition for Interim Suspension Order was issued pursuant to stipulation by Respondent. Pursuant to that Order, Respondent's Physician & Surgeon's Certificate G 88200 is suspended and Respondent is restrained and prohibited from practicing or attempting to practice as a physician and surgeon in California pending a final Decision by the Board. Respondent is immediately restrained and prohibited from the following:

a. Practicing or attempting to practice as a physician and surgeon in California;

b. Advertising, by any means, or holding himself out as practicing or available to practice medicine or to supervise physician assistants or advanced practice nurses;

c. Being present in any location or office which is maintained for the practice of medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family or friends;

d. Possessing, ordering, purchasing, receiving, prescribing, dispensing, furnishing, administering or otherwise distributing any controlled substance or any dangerous drug in California, as defined by federal or state law, except legally permitted drugs prescribed to Respondent by his treating physician and surgeon;

e. Possessing or holding his California physician's and surgeon's wall and wallet certificates, possessing any and all prescription blanks.

f. Respondent was further ordered to immediately deliver to the Board, or its agent, for safekeeping pending a final administrative order of the Board in this matter, all indicia of his licensure as a physician, as contemplated by Business and Professions Code Section 119, including but not limited to his wall certificate and wallet card issued by the Board, as well as all prescription forms, all prescription drugs not legally prescribed to Respondent by his treating physician and surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration permits.

JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

5. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

6. Section 2230.5 of the Code states:

"(a) Except as provided in subdivisions (b) and (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

"(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

"(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon

proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts."

"(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

"(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

"(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation."

7. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a

reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

8. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

9. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

10. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

11. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

12. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

DRUG LAWS

13. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

14. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal

Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

15. Section 2241 of the Code states:

"(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

"(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

"(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

"(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

"(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

"(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

"(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

"(A) Impaired control over drug use.

"(B) Compulsive use.

"(C) Continued use despite harm.

"(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5.

16. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

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17. Code section 4021 states:

"'Controlled substance' means any substance listed in chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

18. Code section 4022 provides:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only' or words of similar import.

"(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

19. Health and Safety Code section 11153 states in pertinent part:

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice...

"(b) Any person who knowingly violates this section shall be punished by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand ($20,000), or by both that fine and imprisonment..."

20. Health and Safety Code section 11157 states:

"No person shall issue a prescription that is false or fictitious in any respect."

21. Health and Safety Code section 11170 states:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

22. Health and Safety Code section 11173, subdivision (a), states:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by (1) fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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23. Health and Safety Code section 11175 states:

"No person shall obtain or possess a prescription that does not comply with his division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription."

DRUGS INVOLVED

24. Gamma-Hydroxybutyrate (GHB), also referred to as a "club drug" or "date rape drug," is a Schedule I controlled substance as defined by section 11054, subdivision (e)(3), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

25. Heroin is a Schedule I controlled substance as defined by section 11054, subdivision (c)(11), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

26. Ectasy (aka MDMA) is a Schedule I controlled substance as defined by section 11054, subdivision (d)(4), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

27. Marijuana is a Schedule I controlled substance as defined by section 11054, subdivision (d)(13), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

28. Amphetamine is a Schedule II controlled substance as defined by section 11055, subdivision (d)(1), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

29. Methamphetamine is a Schedule II controlled substance as defined by section 11055, subdivision (d)(2), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

30. Codeine is a Schedule II controlled substance as defined by section 11055, subdivision (b)(1)(G), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

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31. Morphine is a Schedule II controlled substance as defined by section 11055, subdivision (b)(1)(L), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

32. Opiates are Schedule II controlled substances as defined by section 11055, subdivision (c), of the Health and Safety Code and are dangerous drugs as defined in Section 4022 of the Code.

33. Temazepam is a Schedule IV controlled substance as defined by section 11057, subdivision (d)(29), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

34. Klonopin, also known by the generic name clonazepam, is a Schedule IV controlled substance as defined by section 11057, subdivision (d)(7), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code. Klonopin is known as an anticonvulsant or antiepileptic drug. It is also used to treat panic attacks.

35. Xanax, also known by the generic name alprazolam, is a Schedule IV controlled substance as defined by section 11057, subdivision (d)(1), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

36. Oxazepam is a Schedule IV controlled substance as defined by section 11057, subdivision (d)(23), of the Health and Safety Code and is a dangerous drug as defined in Section 4022 of the Code.

37. Benzodiazepines are classified as Schedule IV controlled substances as defined by section 11057, subdivision (d)(1), of the Health and Safety Code and are dangerous drugs as defined in Section 4022 of the Code.

FACTUAL SUMMARY

38. On July 17, 2017, the Medical Board of California received a complaint alleging that Respondent used methamphetamines and other illicit drugs of abuse and was involved in the drug overdose of a young woman (hereinafter referred to as "S.W.") in a Pasadena hotel room rented to Respondent.

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39. Investigation by the Health Quality Investigations Unit of the Department of Consumer Affairs revealed that Respondent had in fact: been present at the time of S.W.'s overdose situation in his hotel room on March 4, 2016; participated in illicit drug use with S.W., C.W. and D.S.; provided illicit drugs and alcohol to then-minor C.W.; prescribed scheduled and non-scheduled medications to S.W.; and, prescribed non-scheduled medications to then-minor C.W.[1]

40. S.W. (presently 22-years of age) met Respondent in approximately February 2015. She met with Respondent to have sex and to use methamphetamine and other illegal drugs until approximately November 2016.

41. During S.W.'s relationship with Respondent from approximately February 2015 to November 2016, Respondent prescribed medications to S.W. as well as provided her with illegal drugs, money, and living expenses.

42. During S.W.'s relationship with Respondent from approximately February 2015 to November 2016, S.W. used illicit drugs in Respondent's car and academic/administrative office. Respondent introduced S.W. to work colleagues and staff as his niece.

43. During S.W.'s relationship with Respondent from approximately February 2015 to November 2016, Respondent would return to his medical office to see patients within hours of using methamphetamine with S.W.

44. During S.W.'s relationship with Respondent from approximately February 2015 to November 2016, S.W. saw Respondent nearly every day, often with him driving from Pasadena to Huntington Beach.

45. During S.W.'s relationship with Respondent from approximately February 2015 to November 2016, S.W. observed a supply of methamphetamine that Respondent kept in a special hidden compartment in his car.

46. As a result of unruly conduct and behavior, including room damage due to drug use, Respondent is not permitted to return to various hotels in Pasadena and other locations.

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[1] Initials are used for privacy purposes.

47. During S.W.'s relationship with Respondent from approximately February 2015 to November 2016, S.W. witnessed Respondent using methamphetamines and heroin. S.W. documented Respondent's ingesting of illegal substances while in her presence in videos and digital images.

48. In February 2016, approximately three weeks prior to her March 4, 2016 overdosing incident, S.W. had completed a 30-day drug rehabilitation program and was about to begin an intensive outpatient program.

49. Respondent had paid for some of S.W.'s substance abuse rehabilitation programs but also sent her drugs of abuse to residential treatment.

50. In March 4, 2016, S.W. overdosed while using GHB in the presence of Respondent in a hotel room that had been paid for by Respondent.

51. While S.W. was unconscious, Respondent requested that hotel staff provide him with a wheelchair for transporting S.W. Hotel staff, upon learning that S.W. was unconscious, informed Respondent that the paramedics had to be called for S.W. Illicit drugs and drug paraphernalia were found inside the hotel room.

52. Following the request for paramedic assistance, S.W. was taken to Huntington Memorial Hospital ("hospital") by ambulance.

53. Respondent reported to the paramedics that he believed that S.W. drank too much alcohol. He had actually provided S.W. with methamphetamine, GHB and heroin the night of her overdose but did not inform the paramedics or any medical personnel at the hospital of the same.

54. S.W.'s medical records reflect that Respondent reported to the hospital social worker that he was a family friend and had rented a hotel room for S.W. It is also set forth in S.W.'s medical records that Respondent reported to the hospital social worker that S.W. recently completed a 30-day in-patient rehabilitation program.

55. Toxicology screening at the hospital revealed that S.W. had a minimal amount of alcohol in her system (less than 0.010 grams per deciliter). She tested positive for Opiates, Benzodiazepine, Amphetamine, Ecstasy, Methamphetamine, Codeine, Morphine, Nordiazepam, Oxazepam and Temazepam.

56. After being hospitalized in the emergency room for approximately four hours, S.W. was discharged and returned to the hotel with Respondent. They moved to a different room paid for by Respondent. Respondent told S.W. that at around the time of her overdose, he placed a bag of drugs and drug paraphernalia, including heroin, methamphetamine and GHB, in the hotel stairwell a couple of floors down from the hotel room that they had been staying in at the time of her overdose. When they returned to the hotel following S.W.'s hospital discharge, S.W. and Respondent picked up the bag of drugs and drug paraphernalia from the hotel stairwell and took them to the new hotel room where they continued to use the drugs.

57. On March 8, 2016, Respondent was involved in a single car accident sustaining minor injuries where he may have fallen asleep at the wheel and veered off the street onto the curb and bushes.

58. Respondent prescribed 30 tablets of Klonopin 2 mg to S.W. on three separate occasions: December 26, 2015, January 15, 2016 and February 19, 2016. In addition, he prescribed various non-scheduled medications to S.W. from August 18, 2015 through October 26, 2016, including but not limited to antibiotics, anti-fungal medications and birth control pills. He did not maintain medical records for S.W.

59. C.W. is the brother of S.W., and was approximately 17-years-old when he was introduced to Respondent during the approximate timeframe of February 2015 to November 2016. Both C.W. and S.W. told Respondent that C.W. was under-age.

60. Because C.W. was underage during the timeframe of S.W.'s relationship with Respondent, C.W. was unable to purchase glass pipes used to consume illicit drugs as well as alcohol. As such, Respondent bought glass pipes at smoke shops and alcohol at liquor stores for C.W.

61. During the timeframe of S.W.'s relationship with Respondent, Respondent provided then-minor, C.W. with alcohol, nitrous oxide, marijuana, methamphetamine and Xanax.

62. During the timeframe of S.W.'s relationship with Respondent, C.W. witnessed Respondent smoke methamphetamine.

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63. Respondent prescribed an asthma inhaler for C.W. on December 30, 2015 to soothe C.W.'s lungs after smoking marijuana and methamphetamine. He did not maintain medical records for C.W.

64. In approximately August 2016, S.W. introduced D.S. to Respondent. D.S. spent approximately six to eight weeks with Respondent and S.W. drinking alcohol and doing drugs such as marijuana and methamphetamine. Respondent provided the drugs the majority of the time.

65. D.S., familiar with both methamphetamine and heroin, witnessed Respondent ingest methamphetamine and heroin during the approximately six to eight week period he spent with Respondent and S.W.

66. D.S. stopped spending time with Respondent because D.S. went into a drug rehabilitation program.

FIRST CAUSE FOR DISCIPLINE

(Mental Illness and/or Physical Illness Affecting Competency)

67. By reason of the facts set forth above in paragraphs 38 through 66, Respondent's license is subject to disciplinary action pursuant to section 822 of the Code as a result of mental illness and/or physical illness affecting Respondent's competency. The circumstances are as follows:

68. The fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) provides eleven criteria for identifying substance use disorders as assessed by the individual's own report, report of knowledgeable others, clinician's observations, and biological testing. The severity of the substance use disorder ranges from mild to severe (mild when there are 2-3 symptoms present; moderate when there are 4-5 symptoms present and severe when there are 6 or more symptoms present). The 11 criteria are as follows:

a. Taking the substance in larger amounts or over a longer period than was intended;

b. Persistent desire or unsuccessful efforts to cut down or stop using the substance;

c. Spending a great deal of time in activities necessary to obtain use or recover from the effects of the use of the substance;

d. Cravings and urges to use the substance;

e. Failing to fulfill major role obligations at work, school, or home because of substance use;

f. Continued use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the substance use;

g. Important social, occupational, or recreational activities are given up or reduced because of substance use;

h. Recurrent substance use in situations in which it is physically hazardous;

i. Continued use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by substance use;

j. Tolerance, by either a need for more of the substance to achieve the desired effect or a markedly diminished effected with continued use of the same amount;

k. Development of withdrawal symptoms, which can be relieved by taking more of the substance.

69. Respondent meets diagnostic criteria for substance use disorder from February 2015 through November 2016 and the presence of this condition significantly impacts his ability to safely practice medicine. More specifically, Respondent meets at least four of the diagnostic criteria for substance use disorder as follows:

a. A great deal of time was spent in activities necessary to obtain drugs, use the drugs, or recover from the drugs effects as evidenced by Respondent spending time driving to procure drugs and deliver drugs.

b. Important social, occupational or recreational activities were given up or reduced because of drug use as evidenced by Respondent spending nearly every day, including business days, using drugs and driving to see S.W.

c. Recurrent drug use in situations where it was physically hazardous, as evidenced by reports of Respondent driving with methamphetamine in his car or going back to work after having ingested illicit drugs and by using in his medical offices.

d. Continued drug use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of drugs as evidenced by ongoing drug use after S.W. overdosed and repeated interactions with law enforcement related to drug use.

70. Respondent's acts and/or omissions set forth in paragraphs 38 through 66 above, whether proven individually, jointly, or in any combination thereof, constitute mental illness and/or physical illness affecting Respondent's competency in violation of section 822 of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Act Substantially Related to the Qualifications, Functions or Duties of a Physician)

71. By reason of the facts set forth above in paragraphs 38 through 66, Respondent's license is subject to disciplinary action pursuant to section 2234, subdivision (e), of the Code for dishonest acts substantially related to the qualifications, functions or duties of a physician. The circumstances are as follows:

72. From approximately February 2015 to November 2016, Respondent prescribed medications, including controlled substances, to persons with whom he had personal relations without a proper medical examination or diagnosis.

73. From approximately February 2015 to November 2016, Respondent practiced medicine on the same day as using drugs of abuse.

74. From approximately February 2015 to November 2016, Respondent showed a blatant disregard for S.W.'s welfare - it was known to him that she was suffering from a substance use disorder and he continued to provide her with drugs of abuse and even provided her drugs of abuse inside a treatment facility.

75. At the time of S.W.'s overdose on March 4, 2016, Respondent was not forthright with the treating medical personnel regarding S.W.'s drug consumption.

76. From approximately February 2015 to November 2016, Respondent provided alcohol and drugs of abuse to then-minor, C.W.

77. From approximately February 2015 to November 2016, Respondent purchased illicit drugs and transported drugs in his own vehicle.

78. Respondent's acts and/or omissions set forth in paragraphs 38 through 66 above, whether proven individually, jointly, or in any combination thereof, constitute dishonest acts in violation of section 2234, subdivision (e), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)

79. By reason of the facts set forth above in paragraphs 39 through 43, 45 through 47, 49 through 56 and 58 through 65, Respondent's license is subject to disciplinary action pursuant to section 2238 of the Code for violating drug statutes.

80. Respondent's acts and/or omissions set forth in paragraphs 39 through 43, 45 through 47, 49 through 56 and 58 through 65, above, whether proven individually, jointly, or in any combination thereof, constitute drug statute violations in violation of section 2238. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Misuse of Controlled Substances)

81. By reason of the facts set forth above in paragraphs 39 through 43, 45 through 47, 49 through 56 and 58 through 65, Respondent's license is subject to disciplinary action pursuant to section 2239, subdivision (a), of the Code for the misuse of controlled substances.

82. Respondent's acts and/or omissions set forth in paragraphs 39 through 43, 45 through 47, 49 through 56 and 58 through 65 above, whether proven individually, jointly, or in any combination thereof, constitute misuse of controlled substances in violation of section 2239, subdivision (a), of the Code. Therefore, cause for discipline exists.

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FIFTH CAUSE FOR DISCIPLINE

(Use or Prescribing or Administering to Himself a Controlled Substance or Dangerous Drug)

83. By reason of the facts set forth above in paragraphs 39, 40, 43, 45, 46, 47, 56, 62, 64 and 65, Respondent's license is subject to disciplinary action pursuant to section 2239, subdivision (a), of the Code for using or prescribing or administering to himself a controlled substance or dangerous drug. The circumstances are as follows:

84. From approximately February 2015 to November 2016, Respondent practiced medicine on the same day as using drugs of abuse.

85. From approximately February 2015 to November 2016, Respondent purchased illicit drugs and transported drugs in his own vehicle.

86. Respondent's acts and/or omissions set forth in paragraphs 39, 40, 43, 45, 46, 47, 56, 62, 64 and 65 above, whether proven individually, jointly, or in any combination thereof, constitute using or prescribing or administering to himself a controlled substance or dangerous drug in violation of section 2239, subdivision (a), of the Code. Therefore, cause for discipline exists.

SIXTH CAUSE FOR DISCIPLINE

(Prescribing, Dispensing, or Furnishing Dangerous Drugs Without an Appropriate Prior Examination and Medical Indication)

87. By reason of the facts set forth above in paragraphs 39, 40, 41, 49, 50, 51, 56, 57, 61, 63, and 64, Respondent's license is subject to disciplinary action pursuant to section 2242, subdivision (a), of the Code for prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and medical indication.

88. Respondent's acts and/or omissions set forth in paragraphs 39, 40, 41, 49, 50, 51, 56, 57, 61, 63, and 64 above, whether proven individually, jointly, or in any combination thereof, constitute prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and medical indication in violation of section 2242, subdivision (a), of the Code. Therefore, cause for discipline exists.

SEVENTH CAUSE FOR DISCIPLINE

(Knowingly Making or Signing Any Document Directly Related to the Practice of Medicine that Falsely Represents an Existence of a State of Facts)

89. By reason of the facts set forth above in paragraphs 39, 41, 58 and 63, Respondent's license is subject to disciplinary action pursuant to section 2261 of the Code for knowingly making or signing any document directly related to the practice of medicine that falsely represents an existence of a state of facts.

90. Respondent's acts and/or omissions set forth in paragraphs 39, 41, 58 and 63 above, whether proven individually, jointly, or in any combination thereof, constitute knowingly making or signing any document directly related to the practice of medicine that falsely represents an existence of a state of facts in violation of section 2261 of the Code. Therefore, cause for discipline exists.

EIGHTH CAUSE FOR DISCIPLINE

(Failing to Maintain Adequate and Accurate Medical Records)

91. By reason of the facts set forth above in paragraphs 39, 41, 58 and 63, Respondent's license is subject to disciplinary action pursuant to section 2266 of the Code for failing to maintain adequate and accurate medical records.

92. Respondent's acts and/or omissions set forth in paragraphs 39, 41, 58 and 63 above, whether proven individually, jointly, or in any combination thereof, constitute failing to maintain adequate and accurate medical records in violation of section 2266 of the Code. Therefore, cause for discipline exists.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

93. By reason of the facts set forth above in paragraphs 38 through 66, Respondent's license is subject to disciplinary action pursuant to section 2234 of the Code for engaging in unprofessional conduct. The circumstances are as follows:

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94. From approximately February 2015 to November 2016, Respondent prescribed medications, including controlled substances, to persons with whom he had personal relations without a proper medical examination or diagnosis.

95. From approximately February 2015 to November 2016, Respondent practiced medicine on the same day as using drugs of abuse.

96. From approximately February 2015 to November 2016, Respondent showed a blatant disregard for S.W.'s welfare - it was known to him that she was suffering from a substance use disorder and he continued to provide her with drugs of abuse and even provided her drugs of abuse inside a treatment facility.

97. At the time of S.W.'s overdose on March 4, 2016, Respondent was not forthright with the treating medical personnel regarding S.W.'s drug consumption.

98. From approximately February 2015 to November 2016, Respondent provided alcohol and drugs of abuse to then-minor, C.W.

99. From approximately February 2015 to November 2016, Respondent purchased illicit drugs and transported drugs in his own vehicle.

100. Respondent's acts and/or omissions set forth in paragraphs 38 through 66 above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct in violation of section 2234 of the Code. Therefore, cause for discipline exists.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 88200, issued to Carmen Anthony Puliafito, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants pursuant to section 3527 of the Code and advanced practice nurses;

3. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring; and

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4. Taking such other and further action as deemed necessary and proper.

DATED: October 13, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

LA2017605552